

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Lisa McAfee
88275 Maple Road
Jewett, Ohio 43986

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Director's Final Findings
and Orders

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Lisa McAfee ("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 her 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 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, along with her sisters, Kelly Dials, and Dana Meadows are the owners of two parcels of land totaling 65.25 acres that were identified in the records of the Jefferson County Recorder's Office as parcels numbers 15-01095 & 15-01094. The parcels are located approximately .5 miles from the intersection of State Route 152 and Township Road 241 in Knoxville, Jefferson County, Ohio (the "Property").

2. 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).
3. There are currently an estimated 200 scrap tires as well as other solid waste scattered over the Property. Additionally, Ohio EPA estimates that approximately 10,000 scrap tires are buried in a pit ("Tire Pit") on the Property along with partially burned scrap tires and tire fire residuals stemming from a fire at the Property on November 6, 2002.
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 Chapter 3745-27.
5. On October 16, 1997, Ohio EPA received a complaint from the Jefferson County Recycling and Litter Prevention Office regarding open dumping of scrap tires on the Property.
6. From April of 1998 to May of 2005, Ohio EPA conducted numerous inspections of the Property documenting violations of Ohio's solid waste laws. However, during that time all Notices of Violation ("NOV") and other correspondence regarding the Property were sent to Mrs. Dials as Ohio EPA believed she was the sole owner of the Property.
7. In written correspondence dated June 2, 1998, Mrs. Dials attorney informed Ohio EPA that Mrs. Dials had inherited the Property from her grandfather and only learned during the administration of the Estate about the scrap tires illegally disposed of on the Property. Mrs. Dials' attorney further stated that the legal counsel for the estate had indicated that the persons responsible for the accumulation of the tires were being pursued by law enforcement officers.
8. Ohio EPA contacted the Jefferson County Litter Prevention Office, the Jefferson County Health Department, and the Jefferson County Sheriff's Office in an attempt to locate the individuals responsible for the accumulation of the scrap tires. However, none of the above listed offices reported any knowledge of the source of the tires on the Property or the persons responsible for their accumulation.
9. On November 6, 2002, the scrap tires on the Property caught fire. Ohio EPA conducted inspections of the Property on November 7, 2002, and November 15, 2003, to assess the condition of the Property following the fire. In correspondence dated November 19, 2002, Ohio EPA notified Mrs. Dials that approximately half of the estimated 25,000 scrap tires on the Property had been burned in the fire and that local fire departments had covered the scrap tire pile with soil to smother the fire.

10. On April 13, 2005, Ohio EPA was contacted by the Knoxville Fire Department regarding open flames emanating from a sinkhole in the Tire Pit on the Property.
11. On April 15, 2005, Ohio EPA visited the Property and observed that there were no longer any visible flames emanating from the sinkhole in the Tire Pit.
12. Ohio EPA was able to speak with Mrs. Dials via telephone on May 17, 2005. During the conversation Mrs. Dials indicated that she was not the sole owner of the Property but had inherited the Property and shared ownership with her two sisters, Lisa McAfee, and Dana Meadows.
13. Ohio EPA confirmed the joint ownership of the Property through a record search of the Jefferson County Probate Court.
14. Respondent was contacted via telephone on June 15, 2005, and notified that as an owner of the Property, she along with her sisters, were responsible for removing and disposing of the solid waste at the Property. Respondent indicated she was not responsible for the accumulation of scrap tires and other solid waste and that she did not have the financial resources to clean up the Property.
15. Ohio EPA conducted an inspection of the Property on June 15, 2005. In correspondence dated July 29, 2005, Ohio EPA notified Respondent, along with her sisters, of the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires and other solid wastes.
 - b. OAC 3745-400-04(B) for illegal disposal of construction and demolition debris.
 - c. OAC Rules 3745-27-60(B)(6)(a)-(f) for failure to properly store scrap tires.
 - d. OAC Rules 3745-27-60(B)(8)(a)-(c) for failure to conduct mosquito control.
 - f. OAC Rules 3745-27-79(C),(D),(E), and (G) for failure to remediate the scrap tire fire.
16. Ohio EPA met with Respondent's Father and Mrs. Meadows' spouse at the Property on August 23, 2005. Respondent, Mrs. Meadows, and Mrs. Dials had the Property surveyed and the survey lines indicated that the solid waste including scrap tires and construction and demolition debris disposed in a area beginning at Township Road 241 and extending east approximately 1200 feet was not on the Property owned by Respondent.

17. In written correspondence dated August 29, 2005, Ohio EPA documented the August 23, 2005, meeting and informed Respondent that while she was not responsible for the removal of solid waste and construction demolition debris on the neighboring property she was still responsible for the removal of scrap tires and other solid waste disposed on her Property.
18. On December 27, 2005, Ohio EPA issued an Invitation to Negotiate ("ITN") consensual Directors Final Findings and Orders ("DFF&Os") to Respondent, Mrs. Meadows, and Mrs. Dials, addressing the violations at the Property.
19. In response to the ITN Ohio EPA received written correspondence dated January 1, 2006, wherein Respondent stated, in part, the following;
 - a. The scrap tires were dumped on the Property prior to Respondent and her sisters being willed the Property;
 - b. Respondent spoke with Sheriff Abdalla of the Jefferson County Sheriff's Office who informed Respondent that he did not have knowledge of the individuals who placed the tires on the Property, but he thought they were placed on the Property in relation to a power plant that was planning to burn tires;
 - c. Respondent stated that her cousin had a copy of a police report stating that three individuals were responsible for dumping the tires on the Property;
 - d. Respondent has attempted to look for grant money to aid in the removal of tires but has been unsuccessful;
 - e. Respondent stated that she and her sisters have placed approximately 100 signs on the Property in an effort to keep individuals off the Property and have blocked the entrance to the Property with a gate;
 - f. Respondent does not believe that she and her sisters should be held responsible for the removal of the tires as they did not place the tires on the Property, but she would be willing to apply for any available grants to clean up the Property.
20. Ohio EPA attempted to contact Respondent's cousin to obtain a copy of the alleged police report at the telephone number included in Respondent's January 1, 2006, correspondence but was unsuccessful. Furthermore, Ohio EPA has never received a copy of any police reports from Respondent, her sisters, or the Jefferson County Sheriff's Office.

21. On March 17, 2006, Respondent and Mrs. Dials meet with Ohio EPA to discuss the DFF&O's. During the discussion Respondent and Mrs. Dials indicated that neither they, nor their sister had the funds to complete the work required under the DFF&O's. Ohio EPA informed Respondent and Mrs. Dials that they were free to submit financial information to Ohio EPA for review, so that Ohio EPA could verify they were unable to fund the clean-up of the Property.
22. Ohio EPA conducted an inspection of the Property on April 19, 2006. In correspondence dated April 28, 2006, Ohio EPA notified Respondent, along with her sisters, of the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires and other solid wastes.
 - b. OAC Rules 3745-27-60(B)(6)(a)-(f) for failure to properly store scrap tires.
 - c. OAC Rules 3745-27-60(B)(8)(a)-(c) for failure to conduct mosquito control.
 - d. OAC Rules 3745-27-79(C),(D),(E), and (G) for failure to remediate the scrap tire fire.
23. By April 28, 2006, Ohio EPA had received financial information from Respondent, Mrs. Meadows and Mrs. Dials. Based on Ohio EPA's review of the information provided, Ohio EPA has determined that Respondent, Mrs. Meadows, and Mrs. Dials are each able to fund the clean-up of the Property.
24. In correspondence dated June 9, 2005, Ohio EPA notified Respondent, along with her sisters, of the results of Ohio EPA's financial analysis. Ohio EPA also indicated that Respondent had until July 7, 2006, to sign the DFF&O's either as written or with revisions acceptable to Ohio EPA. Ohio EPA further informed Respondent that it would be forced to pursue other enforcement options in the absence of signed DFF&O's.
25. Ohio EPA was contacted via telephone on July 5, 2006, and informed that Respondent, Mrs. Dials, and Mrs. Meadows would not be entering into the DFF&O's
26. To date the tires and other solid waste remain on the Property in violation of OAC Rule 3745-27-05(C).
27. 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."

28. 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).
29. The open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) (effective August 15, 2003) 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."
30. 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."
31. OAC Rule 3745-27-60(B) (effective March 29, 1996, as amended 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).
32. Mismanagement of scrap tires can present a potential health risk to the community. Specifically, 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.
33. As of December 2003, the Ohio Department of Health had confirmed four cases of West Nile Virus in birds found in Jefferson County.
34. Given that the scrap tire pile on the Property is within 1.5 miles of the Village of Knoxville and given the confirmed presence of West Nile Virus in Jefferson County, the potential that another tire fire could obscure major highways such as State Route 152, and in consideration of the adverse impact that another tire fire could have on 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.

35. 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.”
36. ORC Section 3734.85 further provides, “...[i]f 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.”

V. ORDERS

Respondent shall achieve compliance with ORC Chapter 3734. and the rules promulgated thereunder according to the following compliance schedule:

1. Within seven (7) days after the effective date of these Orders, Respondent shall:
 - a. post a sign at each entrance of the Property and in an area near the Tire Pit, warning the public of the danger of unstable soil and waste material. The signs shall be of tri-fold design and be legible from all angles;
 - b. erect a temporary fence or other means of preventing public access at each entrance to the Property and surrounding the Tire Pit.
2. Within sixty (60) days after the effective date of these Orders, Respondent shall remove all non scrap tire solid waste from the Property and dispose of all solid waste at a licensed solid waste disposal facility. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of wastes disposed and shall forward such documentation to Ohio EPA within ten (10) days after completion of this Order.
3. 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.
4. Within 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) in order to reduce the likelihood of additional fires associated with the scrap tires at the Property.
 5. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of all whole and partially burned scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires. Respondent shall arrange for the transportation and disposal of the scrap tires as follows;
 - a. All partially burned scrap tires shall be disposed as a solid waste per OAC 3745-27-79(C)(1)(b) at a licensed solid waste disposal facility;
 - b. All non-burned scrap tires shall be transported by a registered transporter, to a scrap tire storage, monocell, monofill, or recovery facility licensed under ORC Section 3734.81, 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.
 6. Respondent shall obtain receipts from the licensed solid waste disposal facility, indicating weight and/or volume of partially burned scrap tires received. Respondent shall forward such documentation to Ohio EPA within ten (10) days after completion of Order No. Five (5) above.
 7. Respondent shall obtain receipts from the registered transporter and the facility, indicating weight, volume and number of scrap tires received. Respondent shall forward such documentation to Ohio EPA within ten (10) days after completion of Order No. Five (5) above.
 8. Respondent shall continue to comply with Orders Nos. One (1), Three (3), and Four (4) above until such time as all scrap tires have been removed from the Property.
 9. Within thirty (30) days after the effective date of these Orders, Respondent shall prepare and submit to Ohio EPA a work plan which details the development and implementation of a Site Characterization and Remediation Plan in accordance with OAC Chapter 3745-27-79. The work plan shall contain an implementation schedule

describing time frames and action items for completing each component of the Site Characterization and Remediation Plan.

10. Within ninety (90) days after the effective date of these Orders, Respondent shall submit a Site Characterization and Remediation Plan for Ohio EPA review and approval, in accordance with OAC Chapter 3745-27-79(D), for the fires that occurred at the Property on November 6, 2002 and April 13, 2005. The Site Characterization and Remediation Plan shall include but not be limited to:
 - a. Soil Contamination Characterization and Remediation in accordance with OAC Rule 3745-27-79(E);
 - b. Surface Water Contamination Characterization and Remediation in accordance with OAC Rule 3745-27-79(F); and
 - c. Ground Water Monitoring, Assessment and Corrective Measures in accordance with OAC Rule 3745-27-79(G).
11. In the event that Ohio EPA notifies Respondent that any portion of the Site Characterization and Remediation Plan is unsatisfactory, either whole or in part, Respondent shall within thirty (30) days after notification, amend the Site Characterization and Remediation Plan. Ohio EPA may approve the Site Characterization and Remediation Plan or amendments thereto with conditions or modifications. Upon receiving approval of the Site Characterization and Remediation Plan from Ohio EPA, Respondent shall implement the Site Characterization and Remediation Plan in accordance with the schedules contained therein and in accordance with applicable law.

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 Enforcement Coordinator 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 the 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 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 and/or the Property.

IX. 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

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 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., 6111. 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.

XIII. 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:

Joseph P. Koncelik, Director

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