

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

RRI of Ohio, Inc.	:	<u>Director's Final Findings</u>
1165 Brittain Street	:	<u>and Orders</u>
Youngstown, Ohio 44502	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to RRI of Ohio, Inc., ("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 its successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facility (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 identified in the records of the Mahoning County Recorder's office by quit-claim deed recorded November 23, 2004, in volume 5492, pages 269 through 271, as permanent parcel number 530390244000 (hereinafter referred to as the "Facility"). The Facility is located at 1165 Brittain Street, Youngstown (Mahoning County), Ohio.

2. Respondent is incorporated under the laws of the State of Ohio and 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).
3. Respondent is the "property owner" as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(7).
4. On September 6, 2005, Ohio EPA issued a Solid Waste Facility Registration ("Registration") to Respondent. Ohio EPA issued the Registration with the following special conditions:
 - a. No temporary outdoor storage of scrap tires shall be permitted.
 - b. Indoor storage is limited to two (2) piles each no larger than twenty-four hundred (2,400) square feet in basal area of whole tires and one (1) pile of finished product storage with a basal area of 1440 square feet.
 - c. Any changes in facility operations or storage must be approved by Ohio EPA prior to the change being implemented.
5. The Youngstown City Health Department is not on the approved list maintained pursuant to OAC Rule 3745-37-08. Therefore, Ohio EPA administers and enforces the solid and infectious waste program in Youngstown.
6. On December 23, 2005, Ohio EPA issued Respondent a 2006 Solid Waste Facility License for a Class II Scrap Tire Recovery Facility. This license expires on December 31, 2006.
7. On December 5, 2006, Ohio EPA received Respondent's application for a 2007 Solid Waste Facility License for a Class II Scrap Tire Recovery Facility.
8. In accordance with to OAC Rule 3745-27-04, "...the director shall either grant or deny a solid waste facility license within ninety days of the date upon which a complete application is received[.]"
9. On February 23, 2006, Ohio EPA conducted an inspection of the Facility and observed the following violations:

- a. OAC Rule 3745-27-65(C)(4), failure to have a copy of the solid waste license and a copy of the approved permit to install or registration certificate for the facility available upon inspection;
- b. OAC Rule 3745-27-65(C)(10), failure to post a sign on the external wall at the entrance to the facility;
- c. OAC Rule 3745-27-65(D)(4), failure to store scrap tires only in areas designated for temporary storage (as approved in the Facility's Registration).

Ohio EPA informed Respondent of these violations in an NOV letter dated March 3, 2006.

10. On March 9, 2006, Ohio EPA conducted an inspection of the Facility, observed that violations identified during the previous inspection had been corrected, and did not identify any new violations. Ohio EPA memorialized the inspection in correspondence to Respondent dated March 14, 2006.
11. On March 22, 2006, Ohio EPA conducted an inspection of the Facility and did not identify any violations. Ohio EPA memorialized the inspection in correspondence to Respondent dated April 3, 2006.
12. On April 5, 2006, Ohio EPA conducted an inspection of the Facility and did not identify any violations. Ohio EPA memorialized the inspection in correspondence to Respondent dated April 12, 2006.
13. On April 19, 2006, Ohio EPA conducted an inspection of the Facility and did not identify any violations. Ohio EPA memorialized the inspection in correspondence to Respondent dated April 21, 2006.
14. On May 3, 2006, Ohio EPA conducted an inspection of the Facility and did not identify any violations, although the inspector noted that scrap tire bead rings were beginning to accumulate. Ohio EPA memorialized the inspection in correspondence to Respondent dated May 8, 2006.
15. On June 8, 2006, Ohio EPA conducted an inspection of the Facility and observed that truck tires were being stored along the inside perimeter walls, which is outside of the approved temporary storage areas. Failure to store scrap tires only in areas designated for temporary storage (as approved in the Facility's Registration) is a violation of OAC Rule 3745-27-65(D)(4). Ohio EPA informed Respondent of this violation in an NOV letter dated June 13, 2006.

16. On October 16, 2006, Ohio EPA conducted an inspection and observed an excessive amount of scrap tires at the Facility. Although the tire shredder was inoperable, Respondent continued to accept and store scrap tires at the Facility, causing the following violations:
- a. OAC Rule 3745-27-65(D)(4), failure to store scrap tires only in areas designated for temporary storage (as approved in the Facility's Registration);
 - b. OAC Rule 3745-27-65(F)(3), exceeding twenty five hundred square feet in basal area for scrap tires storage piles in an enclosed building; and failure to maintain an aisle width of at least eight feet between scrap tire storage piles;
 - c. OAC Rule 3745-27-65(J)(2), failure to record facility operations in a daily log and make those documents available for inspection.

Ohio EPA informed Respondent of these violations in an NOV letter dated October 27, 2006.

17. Ohio EPA received a response to the October 27, 2006 NOV on November 17, 2006. Respondent admitted that tire shredding equipment at the Facility had been inoperable for several months. Additionally, incompetent Facility management had resulted in an accumulation of scrap tires that exceeded the Facility's authorizing documents. Respondent went on to state that the equipment would be repaired and the Facility was taking measures to reduce the number of tires to an acceptable amount by the middle of December 2006.
18. On November 14, 2006, Ohio EPA conducted an inspection and observed an estimated 73,000 scrap tires were stored at the Facility. Respondent informed the inspector that the repairs to the shredder had been completed and shredding was to commence on the following day. Ohio EPA observed the following violations:
- a. OAC Rule 3745-27-65(D)(4), failure to store scrap tires only in areas designated for temporary storage (as approved in the Facility's Registration);
 - b. OAC Rule 3745-27-65(F)(3), exceeding twenty five hundred square feet in basal area for scrap tires storage piles in an enclosed building; and failure to maintain an aisle width of at least eight feet between scrap tire storage piles;
 - c. OAC Rule 3745-27-65(J)(2), failure to record facility operations in a daily log and make those documents available for inspection.

Ohio EPA informed Respondent of these violations in an NOV letter dated November 17, 2006.

19. On December 13, 2006, Ohio EPA conducted an inspection and observed a decrease in the number of scrap tires stored at the Facility. Respondent informed the inspector that approximately 20,000 passenger tire equivalents had been processed since the last inspection. Ohio EPA observed the following violations:
- a. OAC Rule 3745-27-65(D)(4), failure to store scrap tires only in areas designated for temporary storage (as approved in the Facility's Registration);
 - b. OAC Rule 3745-27-65(F)(3), exceeding twenty five hundred square feet in basal area for scrap tires storage piles in an enclosed building; and failure to maintain an aisle width of at least eight feet between scrap tire storage piles;

Ohio EPA informed Respondent of these violations in an NOV letter dated December 18, 2006.

20. On December 28, 2006, Ohio EPA conducted an inspection and observed a reduction in the excess scrap tires stored at the Facility. The shredder equipment was in operation at the time of inspection. Ohio EPA observed continued progress toward compliance. However, the following violations continue:
- a. OAC Rule 3745-27-65(D)(4);
 - b. OAC Rule 3745-27-65(F)(3); and
 - c. OAC Rule 3745-27-65(J)(2) for failure to produce past records.

Ohio EPA informed Respondent of these violations in an NOV letter dated January 9, 2007.

21. To date, Respondent remains in violation of the conditions of registration and licensure and of OAC Rule 3745-27-65 for failure to operate a scrap tire facility in accordance with the requirements and operational criteria specified therein. Approximately 8,000 excess truck tires and 15,000 to 20,000 excess passenger tire equivalents remain at the Facility, as confirmed by Ohio EPA's inspection conducted on December 28, 2006 and NOV to Respondent dated January 29, 2007.
22. The Facility is located within the City of Youngstown (population 82,026), is approximately one quarter (1/4) mile north of Interstate 680 (at least 50,000 vehicles traverse daily). There are nine schools, four hospitals, and two nursing homes located within a five mile radius.

23. In consideration of Respondent's Facility being located within the City of Youngstown and in close proximity to sensitive sub-populations, e.g., schools, hospitals, and nursing homes; and in consideration of a tire fire's potential to hinder traffic on Interstate 680 and to affect sensitive populations, the Director has determined that the accumulation of scrap tires and scrap tire shreds at Respondent's Facility exceeds conditions of registration and 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.

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 record Facility operations in a daily log and make those documents available for inspection, in accordance with OAC Rule 3745-27-65(J)(2).
2. Not later than thirty (30) days after the effective date of these Orders, Respondent shall remove all tire beads from the Facility and arrange for their disposal at a licensed solid waste disposal facility.
3. Not later than forty-five (45) days after the effective date of these Orders, Respondent shall process or cause the removal of all excess scrap tires from the Facility so that the Facility's scrap tire storage complies with OAC Rules 3745-27-65 (D)(4) and (F)(3)(a) and (b). All excess scrap tires removed from the Facility for disposal shall be transported by a registered scrap tire transporter:
 - a. to a scrap tire storage, monofill, monocell, or recovery facility licensed under ORC Section 3734.81; or to such a facility in another state operating in compliance with the laws of that state; or

- b. to any other solid waste disposal facility in another state that is operating in compliance with the laws of that state.
4. Respondent shall not accept additional scrap tires for processing at the Facility until Orders No. 1, 2, and 3 are completed, and Ohio EPA has confirmed the Facility's compliance.
5. Respondent shall obtain receipts from the solid waste disposal facility indicating weight or volume of tire beads disposed and shall forward such documentation to Ohio EPA within seven (7) days after completion of Order No. 1.
6. Provided that Respondent disposes of excess scrap tires, 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 disposed and shall forward such documentation to Ohio EPA within seven (7) days after completion of Orders No. 2.
7. In accordance with ORC Section 3734.85(A), if Respondent has not removed all scrap tires and scrap tire beads from the Facility in accordance with Orders No. 2 and 3, above, Respondent shall provide the Director and his employees, representatives and contractors with access to the Facility to perform whatever measures the Director considers reasonable and necessary to remove and properly manage the scrap tires located on the Facility.
8. If the Director removes the scrap tires and scrap tire beads from the Facility, 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 Facility 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.
9. Respondent shall pay Ohio EPA the amount of \$8,336.00 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 environmental remediation fund established pursuant to ORC Section 3734.281. Payments shall be made by official checks made payable to "Treasurer, State of Ohio" according to the following schedule:

Within sixty (60) days after the effective date of these Orders, Respondent shall pay the first civil penalty installment in the amount of \$833.60. Respondent shall continue to make payments in the amount of \$833.60 every thirty days, thereafter, until the full amount of the penalty has been paid.

10. The official checks shall be submitted to Ohio EPA, Lazarus Government Center, Office of Fiscal Administration, 50 West Town, Suite 700, Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Facility. A copy of the checks shall be sent to Ohio EPA, Lazarus Government Center, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit, 50 West Town Street, Suite 700, 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 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 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 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 Facility.

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 or the Facility.

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
Northeast District Office
Division of Solid and Infectious Waste Management
1110 E. Aurora Road
Twinsburg, Ohio 44087-1969
Attn: Unit Supervisor, DSIWM

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

XI. 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.

XII. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI. of 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.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

IT IS SO AGREED:

RRI of Ohio, Inc.

Signature

Date