State of Ohio Environmental Protection Agency

STREET ADDRESS:
Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:
P.O. Box 1049
Columbus, OH 43216-1049

APR 0 6 2009

Certified Mail

Mr. Shane Sprinkle & Ms. Michelle Halbirt
2725 Hilldale Road
Springfield, Ohio 45505

RE: Director's Final Findings and Orders for 2725 Hilldale Road property

Dear Mr. Sprinkle and Ms. Halbirt:

Transmitted herewith are unilateral Final Findings & Orders ("Orders") of the Director concerning the matter indicated above.

We are aware that you have been in contact with the Clark County Health District regarding clean up of the site located at 2725 Hilldale Road and have submitted a written cleanup plan that gives a schedule of activities and provides that cleanup of the site will be completed by July 1, 2009. The enclosed Orders are consistent with the tasks that have already been included in your proposed cleanup plan. If you complete the proposed cleanup plan on time, and consistent with the requirements of the enclosed Orders, the Director's Orders will be considered fully satisfied.

You are hereby notified that this action of the Director of Environmental Protection (Director) is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The Appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Appeals Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of $70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission.

Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, Ohio 43215

Sincerely,

Kimberly Reese

Kimberly Reese
Systems Management Unit
Division of Solid & Infectious Waste Management

KR/MB/sw

Enclosure: Director's Final Findings and Orders

cc: Bruce McCoy, CO - DSIWM
Jeff Hurdlley, OEPA Legal
Tracy Buchanan, SWDO, DSIWM
Daniel Chatfield, Clark County Director of Environmental Health

OHIO E.P.A.
APR - 6 2009
ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Michelle L. Halbirt	:	
Shane A. Sprinkle	:	Director's Final Findings
2725 Hilldale Road	:	and Orders
Springfield, Ohio 45505	:	

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

Respondents

By: [signature] Date: 4-6-09

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Michelle L. Halbirt and Shane A. Sprinkle (collectively the "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

These Orders shall apply to and be binding upon Respondents and heirs and successors in interest liable under Ohio law. No change in ownership of the Property (as hereinafter defined) shall in any way alter Respondents' 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. Respondents are the owners of a parcel of land, located at Hilldale Road, Clark County, Springfield, Ohio 45505, which is identified by Instrument number 200800011183 in the Deed Record Volume 1853, Page 886, in the Clark County Recorder's Official Record dated July 2, 2008. (the "Property"). The Property is also identified as permanent parcel #300-07-00021-402-002 and commonly known as 2801/2725/2753 Hilldale Road, Springfield, Clark County, Ohio.

2. Respondents are "person(s)" 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 2,000 scrap tires illegally disposed of on the Property.

4. The Property is not licensed or permitted as a scrap tire collection facility, a solid waste disposal facility, a junk yard, or any type of legitimate recycling facility.

5. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).

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."

7. 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."

8. 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."

9. OAC Rule 3745-27-60(B) provides that "the 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 fire hazard unless the tires are stored in accordance with [the standards set forth within OAC Rule 3745-27-60(B)(1) through (11)].

10. 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.

11. Chris Pearson is former owner of the Property and is responsible for the accumulation of scrap tires on the Property.

12. On March 21, 2008, the Respondents purchased the Property at a Sheriff's Sale.

13. On August 11, 2008, Ohio EPA issued Director's Final Findings and Orders ("DFFO's") to Chris Pearson as the person responsible for the accumulation of scrap tires and solid waste on the Property. The DFFO's required him to do the following:

    a. Immediately implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(C) and provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3) to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.

    b. Immediately cease acceptance and disposal of all solid wastes, including scrap tires, at the Property and shall comply with ORC Chapter 3734 and OAC Chapter 3745-27.

    c. Not later than September 10, 2008, establish scrap tire storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B).

    d. Before September 10, 2008, lawfully remove and dispose of five hundred (500) scrap tires and continue to remove five hundred (500) scrap tires every thirty (30) days until all scrap tires are removed from the Property by December 9, 2008, and provide transporter and disposal receipts to Ohio EPA Southwest District Office on a monthly basis.

    e. Not later than December 9, 2008, lawfully remove and dispose of all solid waste, excluding scrap tires, from the Property to a licensed solid waste disposal facility, and obtain disposal receipts. Mr. Pearson was to forward such documentation to Ohio EPA Southwest District Office on a monthly basis.

    f. Submit monthly progress reports to Ohio EPA Southwest District Office summarizing efforts to comply with the requirements of the DFFO's until all scrap tires are removed from the Property.

14. To date, Mr. Pearson has failed to comply with the DFFO's.

15. On January 12, 2009 the Clark County Combined Health District issued Respondents a Final Warning for violations of ORC § 3734.03 (open dumping), OAC 3745-400-04 (illegal disposal of C&DD), and ORC §3767.13(B)*(sic)* (causing or allowing filth to collect or remain). This Final Warning further required Respondents to submit a clean-up schedule.

16. On February 4, 2009, the Respondents met with the Clark County Health Department and presented a written clean-up plan for the Property as required. The Clark County Health Department memorialized the meeting and concurrence with the written clean-up plan by letter dated February 26, 2009.

17. On February 10, 2009 Ohio EPA inspected the Property and observed the following violations:
    a. ORC Section 3734.03 for open dumping of solid waste;
    b. OAC Rule 3745-27-05(C) for open dumping of solid waste;
    c. ORC Section 3734.02(C) for establishing a solid waste facility without a permit;
    d. ORC Section 3734.05(A)*(sic)* for operating a solid waste facility without a license;
    e. OAC Rule 3745-37-01(A) for operating a solid waste facility without a license;
    f. ORC Section 3734.11(A) for violations of ORC Section 3734.13;
    g. OAC Rule 3745-27-60(B)(1) for failure to maintain sufficient drainage such that water does not collect in the scrap tire storage area;
    h. OAC Rule 3745-27-60(B)(7)(c) for failure to separate scrap tire piles of five hundred or less by at least twenty-five feet from buildings and other scrap tire piles:
    i. OAC Rule 3745-27-60(B)(7)(e) for failure to maintain emergency vehicle access at all times to, around, and between the scrap tire storage piles and areas;
    j. OAC Rule 3745-27-60(B)(11) for failure to keep scrap tire fire breaks free of all combustible material.

    These violations were documented in an NOV from Ohio EPA to Respondents dated February 25, 2009.

18. The Ohio Department of Health has confirmed human cases of West Nile Virus in 2002 through 2005, and cases in birds from 2001 to 2006 in Clark County.

19. Given the documented proximity of the scrap tire pile to Springfield and sensitive sub-populations such as elementary and middle schools, and the Springfield drinking water source, the confirmed presence of West Nile Virus in the County, the potential that a tire fire could obscure major transportation routes such as Interstate Route 70, and the adverse impact that a tire fire could have on the waters of the state, 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.

20. 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, the director 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."**

21. ORC Section 3734.85 further provides, "If a person to whom a removal order is issued under this division fails to comply with the order and if the director performs a removal action under this section, the person to whom the removal order is issued is liable to the director for the costs incurred by the director for conducting the removal operation, storage at a scrap tire storage facility, storage or disposal at a scrap tire monocell or monofill facility, or processing of the scrap tires so removed, the transportation of the scrap tires from the site of the accumulation to the scrap tire storage, monocell, monofill, or recovery facility where the scrap tires were stored, disposed of, or processed, and 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. 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(C). Respondents shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3) to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.

2. Upon the effective date of these Orders, Respondents shall cease acceptance and disposal of all solid wastes, including scrap tires, at the Property and shall comply with ORC Chapter 3734 and OAC Chapter 3745-27.

3. Not later than thirty (30) days after the effective date of these Orders, Respondents shall establish scrap tire storage piles and fire breaks at the Property in accordance with OAC Rule 3745-27-60(B).

4. If solid waste other than scrap tires is encountered, then not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of all solid waste, excluding scrap tires, from the Property and dispose of all solid waste, excluding scrap tires, at a licensed

solid waste disposal facility. Respondents shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of solid waste disposed of, excluding scrap tires. Respondents shall forward such documentation to Ohio EPA Southwest District Office on a monthly basis by the 10th day of each month.

5. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and buried scrap tires, and shall arrange for their transportation, by a registered transporter, to a scrap tire storage, monocell, monofill, or recovery facility licensed under ORC Section 3734.81 in Ohio, 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. During the 120 day period, Respondents shall remove, transport and dispose of at least 500 scrap tires within 30 days, and 500 scrap tires every 30 days thereafter with all of the scrap tires being removed, transported and disposed within 120 days after the effective date of these Orders.

6. Respondents shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume and number of scrap tires received. Respondents shall forward such documentation to Ohio EPA Southwest District Office on a monthly basis by the 20th day of each month.

7. Respondents shall submit monthly progress reports until all scrap tires are removed from the Property. Respondents' monthly progress reports, due to Ohio EPA Southwest District Office by the 20th day of each month, shall summarize Respondents' efforts to comply with the requirements of these Orders. The first progress report shall be delivered to Ohio EPA Southwest District Office no later than the 20th day of the month immediately following the month that these Orders become effective.

8. Respondents shall comply with Order Nos. One (1) and Three (3) above until such time as all scrap tires have been removed from the Property unless otherwise provided by Ohio EPA in writing.

VI. TERMINATION

Respondents' obligation 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 Ohio EPA's Division of Solid and Infectious Waste Management Chief 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: "We 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 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 or the Property.

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.

Upon the written request of the recipient of an order issued under ORC Section 3734.85(A), the Director may extend the time for compliance with the order if the request demonstrates that Respondents have acted in good faith to comply with the order.

X. NOTICE

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

Ohio Environmental Protection Agency
Southwest District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
401 E. Fifth St.
Dayton, Ohio 45402

and to:

Clark County Combined Health District
529 East Home Road
Springfield, OH 45503

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

XI. 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.

XII. 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:

Chris Korleski, Director