

Date Issued: JUN 20 2001

Date Effective: JUN 20 2001

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Ms. Maria Woosley :
1754 Dorsetshire Road :
Columbus, Ohio 43229 :

Director's Final Findings
and Orders

and

Mr. Michael Benedict :
3733 Likens Road :
Marion, Ohio 43302 :

Respondents

OHIO EPA
JUN 20 2001
ENTERED DIRECTOR'S JOURNAL

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to Ms. Maria Woosley and Mr. Michael Benedict (collectively the "Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under sections 3734.13 of the Ohio Revised Code ("ORC").

II. PARTIES

These Orders shall apply to and be binding upon the Respondents, their assigns and successors in interest. No changes in ownership relating to the Respondents' 6.92 acre property located at 5710 Township Road 105, Mt. Gilead, Morrow County, Ohio will in any way alter the Respondents' responsibilities under these Orders. The Respondents' obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734. and the regulations promulgated thereunder.

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

By: Sonya Apachin 6/20/01

IV. FINDINGS OF FACT

The Director has determined the following findings of fact:

1. Respondents are the owners of the 6.92 acre property, parcel # G19-OO1-00-430-00, located at 5710 Township Road 105, Mount Gilead, Morrow County, Ohio ("Property").
2. Respondents purchased the Property on March 5, 1990, from Ms. Wilma Sargent.
3. Scrap tires are included in the definition of "solid wastes" under the Ohio Administrative Code (OAC) Rule 3745-27-01 (B)(43).
4. Scrap tires, if not properly managed, may become a breeding ground for mosquitos. Mosquitos are a common disease vector for St. Louis encephalitis, La Crosse encephalitis, Yellow Fever, West Nile Virus and Dengue Fever.
5. Respondents are "persons" as defined under ORC Section 3734.01(G) and are responsible for improper disposal and storage scrap tires at the Property.
6. OAC Rule 3745-27-01 (B)(23)(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."
7. Ohio EPA conducted inspections of the Property on March 2, 2001, June 12, 1998 and March 24, 1998. In correspondence dated March 12, 2001, June 15, 1998 and May 6, 1998, Ohio EPA notified the Respondents that open dumping of solid waste is a violation of OAC Rule 3745-27-05(C) and ORC Section 3734.03.
8. The Morrow County Health Department also documented violations of ORC Sections 3734.03 and 3734.05 and OAC Rule 3745-27-60 and notified the Respondents of these ongoing violations through correspondence dated May 14, 1990, April 25, 1997, and September 18, 1997.
9. The foregoing inspections revealed that solid waste, primarily consisting of 250,000 scrap tires, had been disposed on the Property in violation of OAC Rule 3745-27-05(C) and ORC Section 3734.03.
10. ORC Section 3734.03 prohibits any person from disposing of "solid wastes by open burning or open dumping, except as authorized by the director of environmental protection" OAC Rule 3745-27-05(C) further provides that "[n]o person shall

conduct, permit, or allow open dumping,” as that term is defined in OAC Rule 3745-27-01(B)(23). From on or about March 5, 1990, and continuing to the present, Respondents have allowed open dumping of solid wastes, including scrap tires, and have otherwise illegally stored scrap tires at the Property.

11. ORC Section 3734.81(A) provides that “no person shall operate a scrap tire collection, storage, monocell, monofill, or recovery facility without a license issued under this section by the board of health of the health district in which the facility is located . . . ,” and that “every person proposing to continue to operate an existing scrap tire collection, storage, monocell, monofill, or recovery facility shall procure a license to operate the facility for that year from the board of health of the health district in which the facility is located” Respondents have illegally stored approximately 250,000 scrap tires at the Property, and have failed to obtain a license to operate a scrap tire collection, storage, monocell, monofill, or recovery facility as required by ORC Section 3734.81 (A).
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) - (8). Respondents have not stored the scrap tires at the Property in accordance with the requirements of OAC; Rule 3745-27-60(B).

V. ORDERS

The Respondents shall achieve compliance with ORC Chapter 3734 and the regulations promulgated thereunder according to the following compliance schedule:

1. Within 10 days after the effective date of these Orders and continuing as needed from April 1st to November 1st, Respondents shall implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(B)(8)(b). Respondents shall provide copies of the requisite mosquito control records to Ohio EPA within 10 days after each application of the registered pesticide or larvicide.
2. Beginning 40 days after the effective date of these Orders and continuing monthly thereafter during the period of April 1st to November 1st, Respondents shall inspect, evaluate and forward monthly documentation to Ohio EPA demonstrating the effectiveness of the mosquito control measures conducted in Order No. 1 above. Respondents must provide this documentation by the 10th day of each month. Based upon this monthly evaluation and/or upon Ohio EPA's request, Respondents shall modify the mosquito control activities as necessary to ensure mosquito population control.
3. Beginning July 1, 2001, and continuing quarterly thereafter, Respondents shall remove solid waste 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 transporter, to an authorized scrap tire facility in accordance with the following draw down schedule:

- A. 30,000 tires removed by October 1, 2001;
- B. 60,000 total tires removed by January 1, 2002;
- C. 90,000 total tires removed by April 1, 2002;
- D. 120,000 total tires removed by July 1, 2002;
- E. 150,000 total tires removed by October 1, 2002;
- F. 180,000 total tires removed by January 1, 2003;
- G. 210,000 total tires removed by April 1, 2003;
- H. 240,000 total tires removed by July 1, 2003;
- I. All remaining tires and other solid wastes removed by October 1, 2003.

Respondents shall obtain disposal receipts from the registered transporter and the authorized scrap tire facility indicating weight, volume and number of scrap tires disposed and shall forward such documentation to Ohio EPA in quarterly progress reports due on or before the 10th day of the month immediately following the end of the previous quarter, (i.e. January 10, April 10, July 10, and October 10).

- 4. Within 180 days after the effective date of these Orders, Respondents shall establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B)(1) through (6).
- 5. Respondents shall continue to comply with Orders No. 1 and 2 above until such time as the Respondents fully comply with all of the requirements of Order No. 3.

VI. TERMINATION AND SATISFACTION

The Respondents' obligations under these Orders shall terminate when the Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA, Division of Solid and Infectious Waste Management, that all obligations under these Orders have been performed. and Ohio EPA, Division of Solid and Infectious Waste Management, acknowledges, in writing, Ohio EPA's acceptance of this certification and, demonstration.

This certification shall be signed and submitted by the Respondents. The certification shall make the following attestation: "We certify that the information contained in or accompanying this certification is true, accurate and complete."

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 signatory to these Orders, for any liability arising out of or relating to the Respondents' 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. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Respondents' Property. Ohio EPA reserves all rights and privileges except as specified herein.

IX. NOTICE

All documents demonstrating compliance with these Orders and all other documents required under these Orders to be submitted to Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency
Central District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
3232 Alum Creek Drive
Columbus, OH 43207

and

Morrow County Health Department
Attn: Health Commissioner
48 East High Street
Mt. Gilead, OH 43338

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 civil penalties against the Respondents for noncompliance with these Orders or for violations of the State's environmental laws.

Nothing contained herein shall restrict Ohio EPA from taking administrative, legal or equitable action, as deemed appropriate and necessary, against the Respondents for violations of the State's solid, and infectious waste laws and regulations which have occurred at the Respondents' property, including seeking civil penalties for all violations including those violations addressed in these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Respondents to perform additional activities pursuant to ORC

Chapters 3734. or any other applicable law in the future. Nothing herein shall restrict the right of the 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 the 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.

IT IS SO ORDERED:



Christopher Jones, Director