

**ENVIRONMENTAL REVIEW APPEALS COMMISSION
STATE OF OHIO**

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DAVID TABLER,	:	Case No. ERAC 766298
	:	
	:	
Appellant,	:	
	:	
v.	:	
	:	
	:	
CHRIS KORLESKI, DIRECTOR OF ENVIRONMENTAL PROTECTION,	:	
	:	
	:	
Appellee.	:	

JOINT STIPULATION AND SETTLEMENT AGREEMENT

The parties to this appeal, Appellant David Tabler ("Appellant Tabler"), and Appellee Scott Nally, Director of the Ohio Environmental Protection Agency ("Director") have agreed to resolve the above-captioned appeal according to the terms set forth in this Joint Stipulation and Settlement Agreement. In settlement of the above-captioned appeal, the parties hereto stipulate and agree as follows:

I. STIPULATIONS

1. On December 1, 2008 the Director issued the Director's Final Findings and Orders ("DFFOs") to Appellant Tabler for his property located at Millerton Road, Canton Township, Stark County, Ohio which is further identified as which is further identified as parcel number 13-00796 ("the Property") by the Stark County Auditor. Appellant Tabler's DFFO attached as Exhibit A.
2. The DFFOs ordered Appellant Tabler to remove the scrap tires located on the Property.

3. Appellant Tabler timely filed a Notice of Appeal with the Environmental Review Appeals Commission. In the Notice of Appeal, Appellant Tabler challenged that he does not believe himself responsible for cleanup because he did not place the tires on his property.

4. The parties to this action have engaged in settlement discussions in an attempt to resolve this appeal.

II. SETTLEMENT AGREEMENT

WHEREAS, the parties wish to conclude these proceedings without adjudication by entering into the following Settlement Agreement:

1. Appellant agrees to sign the Authorization and Consent for Access to Property that is the same as or substantially equivalent to the draft presented to Appellant and attached hereto as Exhibit B.

2. Appellant agrees to file a Motion seeking voluntary dismissal with prejudice of this appeal within ten (10) days of signing the Authorization and Consent for Access to Property.

3. Appellant's liability for the abatement of the scrap tires at the Property is limited to a lien for the cost of clean-up that is placed on the Property.

4. The parties agree that signing the Authorization and Consent for Access to Property in accordance with this Joint Stipulation and Settlement Agreement shall resolve the above captioned appeal.

5. By signing this Joint Stipulation and Settlement Agreement, Appellee agrees to waive, relinquish, and release any and all known previously-existing (prior to the date of execution of this Agreement) claims against Appellant that are

related to civil actions against Appellant for civil and administrative penalties that arise under the violations listed in the Orders. Nothing in this Consent Order shall limit the authority of the State of Ohio Bring any action against Appellant or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. §9601, et seq. and/or Revised Code 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order.

6. The entering of this Joint Stipulation and Settlement Agreement shall in no way be construed as an admission by either party as to the lawfulness or unlawfulness or the reasonableness or unreasonableness of the challenged DFFOs as originally issued.

Respectfully submitted,

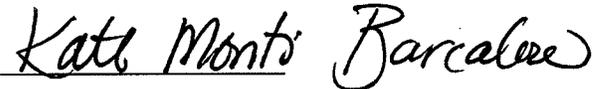
DAVID TABLER

By: 

David Tabler
3755 Woodford Ave. N.W.
Canton, Ohio 44709

Pro se

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

By: 

Kate Monti Barcalow, Esq. (0084310)
Julianna Bull, Esq. (0025204)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

Counsel for Appellee, Ohio EPA

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

David R. Tabler
3755 Woodford Avenue, N.W.
Canton, Ohio 44709

**Director's Final Findings
and Orders**

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.

Respondent

I. JURISDICTION By Dr. J. Lassiter Date: 12-1-08

These Director's Final Findings and Orders ("Orders") are issued to David R. Tabler (the "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

These Orders shall apply to and be binding upon Respondent 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 Respondent's responsibilities under these Orders.

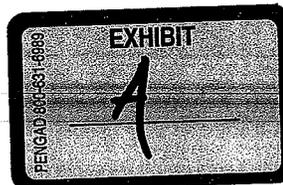
III. DEFINITIONS

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 is the owner of a parcel of land identified in the records of the Stark County Recorder's office by Quit-Claim Deed recorded March 31, 1978 in Volume 4077, pages 174 and 175 (the "Property"). The Property is located in the Northwest Quarter of Section 23, Stark County, Canton Township, Ohio, and is further identified as parcel number 13-00796 by the Stark County Auditor.
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 more than 100 partially buried and surficial scrap tires illegally disposed 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. Mr. Silas Austin, Jr. was found to be the person responsible for open dumping of scrap tires and other solid waste on the Property as well as nearby parcels.
12. On July 12, 1988 the Stark County Combined Board of Health issued Board Orders to Silas Austin, Jr. for creating a nuisance by causing the open dumping

of scrap tires and other solid waste. The Board Order required Mr. Austin to abate the nuisance by removing all waste within 30 days.

13. On November 18, 1988, a Judgment Entry was agreed to and filed in the Stark County Court of Common Pleas which required Mr. Austin to immediately cease additional disposal of solid waste as well as remove and legally dispose of all scrap tires and appliances within 60 days.
14. Mr. Austin Jr. died on or about July 13, 1994 and did not complete the removal and disposal of scrap tires prior to his death. Thus, in accordance with ORC 3734.85 Respondent, as the owner of the Property, is responsible for removing and disposing of scrap tires remaining on the Property.
15. On July 20, 2004, Ohio EPA inspected the Property and found 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. OAC Rule 3745-27-60(B) for the improper storage of scrap tires.

This inspection was documented in an NOV from Ohio EPA to Respondent dated August 12, 2004.

16. On March 2, 2005, the Stark County Board of Health issued Orders that required Respondent to remove and legally dispose of all scrap tires on the Property within 30 days.
17. On July 13, 2005, the Stark County Health Department 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.

This inspection was documented in an NOV from Stark County Health Department to Respondent dated July 15, 2005.

18. On July 29, 2008, the 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. OAC Rule 3745-27-60(B)(7)(e) for failure to store scrap tires in a manner that maintains emergency vehicle access.
- d. OAC Rule 3745-27-60(B)(11) for failure to maintain fire breaks free of combustible material.

This inspection was documented in an NOV from Ohio EPA to Respondent dated August 1, 2008.

- 19. To date, the Ohio Department of Health has confirmed two cases of West Nile Virus in Stark County.
- 20. Given the documented proximity of the scrap tire pile to Canton and sensitive sub populations such as nursing homes and elementary, middle, and high schools; 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 77 and U.S. Route 30; 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.
- 21. 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."
- 22. 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, Respondent shall implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(C). Respondent 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, Respondent 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, Respondent shall establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B).
4. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent 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, Respondent 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. Respondent shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume and number of scrap tires received. Respondent shall forward such documentation to Ohio EPA Southwest District Office on a monthly basis by the 10th day of each month.
5. Respondent shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume and number of scrap tires received. Respondent shall forward such documentation to Ohio EPA Southwest District Office on a monthly basis by the 20th day of each month.
6. Respondent shall submit monthly progress reports until all scrap tires are removed from the Property. Respondent's monthly progress reports, due to Ohio EPA Northeast District Office by the 20th day of each month, shall summarize Respondent's efforts to comply with the requirements of these Orders. The first progress report shall be delivered to Ohio EPA Northeast District Office no later

than the 20th day of the month immediately following the month that these Orders become effective.

7. Respondent 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

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 Ohio EPA's Division of Solid and Infectious Waste Management Enforcement Coordinator 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 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 Respondent 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 Respondent has 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
Northeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969

and to:

Stark County Health Department
3951 Convenience Circle, N.W.
Canton, OH 44718-2660

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

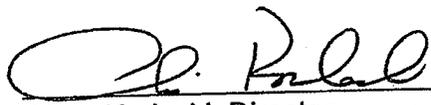
XI. RESERVATION OF RIGHTS

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 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.

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

**AUTHORIZATION AND CONSENT FOR
ACCESS TO PROPERTY**

The undersigned, David R. Tabler (the "Owner"), owns the property located at Millerton Road, Canton Township, Stark County, Ohio (the "Property"). The Property is described on deeds entered into Stark County records in Volume 4077, Pages 174 and 175. Property is identified and more particularly described in the deed attached hereto as Attachment A.

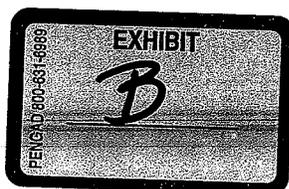
The Owner represents that he holds title to the Property in fee simple absolute. The Owner is a "person" as that term is defined in Ohio Revised Code ("ORC") Section 3734.01(G) and in Ohio Administrative Code ("OAC") Rule 3745-27-01(B)(27).

On December 1, 2008, the Director of the Ohio Environmental Protection Agency ("Ohio EPA") issued Final Findings and Orders pursuant to Sections 3734.13 and 3734.85 of the Ohio Revised Code ("ORC") to the Owner to remove all scrap tires from the Property. As of the date of signing this entry agreement, the Owner has not removed the scrap tires as required by the Final Findings and Orders.

ORC Section 3734.85(A) authorizes the Director of Ohio EPA or Ohio EPA's employees or contractors to enter upon the land on which an accumulation of scrap tires is located and remove and transport the scrap tires to a scrap tire recovery, storage, or disposal facility. Pursuant to ORC Section 3745.01(C), the Director has authority to enter into necessary contracts and agreements to further the purposes of ORC Chapter 3734.

ORC Section 3734.85 provides that failure to comply with a removal order, allows the Director to perform a removal action under this section. Further, the person to whom the removal order was issued is liable to the Director for the costs of 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.

WHEREFORE, the Owner hereby authorizes and consents to allow Ohio EPA, its contractors, and its authorized representatives to access and enter upon the Property for the purpose of taking the necessary and appropriate preventive and/or corrective action, including but not limited to removing, processing, treating, and disposing of scrap tires, and other such actions as are necessary to remove the scrap tires and other associated solid wastes, if any, from the Property. The authorization and consent shall remain in full force and effect until all necessary and appropriate preventive and/or corrective action has been completed at the Property by Ohio EPA, its contractors, and its authorized representatives.



By giving consent to access the Property, the Owner does not waive or otherwise compromise the Owner's rights and responsibilities under law, with the exception of those rights waived in giving this consent.

The Owner hereby relinquishes any claim of an ownership interest in any scrap tires or other associated solid wastes that are removed from the Property or in any proceeds from their sale.

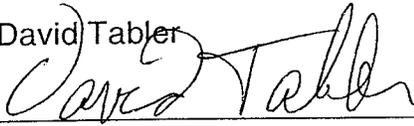
The Owner grants Ohio EPA temporary rights-of-way and the right to improve existing roads or build necessary roads on, over and across the Property for the purpose of removal of scrap tires located on the Property. At the conclusion of the clean up of all the scrap tires from the Property, all improvements shall become the property of the Owner.

The Owner hereby agrees to waive any claims which may arise against Ohio EPA or its officers, employees, authorized representatives, or contractors in the course of performing the actions described above. The Owner hereby also agrees to hold harmless Ohio EPA and its officers, employees, authorized representatives, and/or contractors utilized by Ohio EPA to effect the removal of the scrap tires for any damage to the Property incurred during the course of action under this Authorization and Consent for Access to Property.

The Owner agrees to provide any assistance requested by Ohio EPA or its officers, employees, authorized representatives, and/or contractors in locating scrap tires on the Property or making arrangements to facilitate their removal.

The Owner agrees to waive any challenge to a lien that is assessed against his or her property pursuant to ORC Section 3734.85.

The Owner certifies that this Authorization and Consent for Access to Property is entered into voluntarily and without coercion and that the authorizations contained herein are not granted in consideration of any claims that Ohio EPA may have against the Owner.

David Tabler

Signature

6-24-11
Date