

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Ms. Maria Woosley	:	<u>Director's Final Findings</u>
1754 Dorsetshire Road	:	<u>and Orders</u>
Columbus, Ohio 43229	:	

and

Mr. Michael D. Benedict	:
4649 Township Road 179	:
Marengo, Ohio 43334	:

Respondents

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are 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 Ohio Revised Code ("ORC") sections 3734.13 and 3734.85.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents, and their 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' 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 has determined the following findings:

1. Respondents are the owners of the 6.92 acre property, parcel number G19-001-00-430-00, located at 5710 Township Road 105, Mount Gilead, Morrow County, Ohio (the "Property").

2. Respondents are “persons” as that term is defined in ORC Section 3734.01(G) and Ohio Administrative Code (“OAC”) Rule 3745-27-01(B)(27), as amended by OAC Rule 3745-27-01(P)(3) (effective August 15, 2003).
3. There are currently an estimated 175,000 scrap tires illegally disposed of on the Property.
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. OAC Rule 3745-27-01(I)(5), as amended by OAC Rule 3745-27-01(S)(16) (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.”
6. Scrap tires are included in the definition of “solid wastes” under OAC Rule 3745-27-01(B)(43), as amended by OAC Rule 3745-27-01(S)(24) (effective August 15, 2003).
7. The open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) (effective July 29, 1976) 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.”
8. OAC Rule 3745-27-05(C) was amended on August 15, 2003 and currently states:

No 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.
9. 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.”

10. 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 Rules 3745-27-60(B)(1) - (8).
11. 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.
12. On July 3, 2001, Ohio EPA and the Morrow County Health Department ("MCHD") conducted an inspection of 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) (effective July 29, 1976) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(6)(a) (effective March 29, 1996) for failure to store scrap tires in piles no greater than two thousand five hundred (2,500) square feet in basal area.
 - d. OAC Rule 3745-27-60(B)(6)(c) (effective March 29, 1996) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
 - e. OAC Rule 3745-27-60(B)(8) (effective March 29, 1996) for failure to provide mosquito control.
 - f. Order Number One (1) of the Director's Unilateral Final Findings and Orders, issued to Respondents on June 20, 2001 ("June 2001 Orders") for failure to have implemented mosquito control measures in accordance with OAC Rule 3745-27-60(B)(8)(b) (effective March 29, 1996) and provide documentation of requisite mosquito control to Ohio EPA.

This inspection was documented in letters to Respondents via certified mail dated July 12, 2001.

13. On August 10, 2001, Ohio EPA and the MCHD conducted an inspection of 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) (effective July 29, 1976) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(6)(a) (effective March 29, 1996) for failure to store scrap tires in piles no greater than two thousand five hundred (2,500) square feet in basal area.
 - d. OAC Rule 3745-27-60(B)(6)(c) (effective March 29, 1996) for failure to properly

- separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
- e. OAC Rule 3745-27-60(B)(8) (effective March 29, 1996) for failure to provide mosquito control.
- f. Order Number One (1) of the June 2001 Orders for failure to have implemented mosquito control measures in accordance with OAC Rule 3745-27-60(B)(8)(b) (effective March 29, 1996) and provide documentation of requisite mosquito control to Ohio EPA.

This inspection was documented in letters to Respondents via certified mail dated August 14, 2001.

14. On October 2, 2001, Ohio EPA conducted an inspection of 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) (effective July 29, 1976) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(6)(a) (effective March 29, 1996) for failure to store scrap tires in piles no greater than two thousand five hundred (2,500) square feet in basal area.
 - d. OAC Rule 3745-27-60(B)(6)(c) (effective March 29, 1996) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
 - e. OAC Rule 3745-27-60(B)(8) (effective March 29, 1996) for failure to provide mosquito control.
 - f. Order Number One (1) of the June 2001 Orders for failure to have implemented mosquito control measures in accordance with OAC Rule 3745-27-60(B)(8)(b) (effective March 29, 1996) and provide documentation of requisite mosquito control to Ohio EPA.
 - g. Order Number Three (3) of the June 2001 Orders for failure to remove at least 30,000 scrap tires by October 2, 2001.

This inspection was documented in letters to Respondents via certified mail and regular mail dated October 9, 2001.

15. On November 13, 2001, Ohio EPA conducted an inspection of 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) (effective July 29, 1976) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(6)(a) (effective March 29, 1996) for failure to store scrap tires in piles no greater than two thousand five hundred (2,500) square

- feet in basal area.
- d. OAC Rule 3745-27-60(B)(6)(c) (effective March 29, 1996) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
- e. Order Number One (1) of the June 2001 Orders for failure to have implemented mosquito control measures in accordance with OAC Rule 3745-27-60(B)(8)(b) (effective March 29, 1996) and provide documentation of requisite mosquito control to Ohio EPA.
- f. Order Number Two (2) of the June 2001 Orders for failure to submit evaluations on the effectiveness of the mosquito control measures for the months of July, August, September, or October 2001.
- g. Order Number Three (3) of the June 2001 Orders for failure to remove at least 30,000 scrap tires by October 2, 2001.

This inspection was documented in letters sent to Respondent Woosley via certified mail and Respondent Benedict via regular mail dated November 28, 2001.

16. On March 13, 2002, Ohio EPA conducted an inspection of 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) (effective July 29, 1976) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(6)(a) (effective March 29, 1996) for failure to store scrap tires in piles no greater than two thousand five hundred (2,500) square feet in basal area.
 - d. OAC Rule 3745-27-60(B)(6)(c) (effective March 29, 1996) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
 - e. Order Number One (1) of the June 2001 Orders for failure to have implemented mosquito control measures in accordance with OAC Rule 3745-27-60(B)(8)(b) (effective March 29, 1996) and provide documentation of requisite mosquito control to Ohio EPA.
 - f. Order Number Two (2) of the June 2001 Orders for failure to submit evaluations on the effectiveness of the mosquito control measures for the months of July, August, September, or October 2001.
 - g. Order Number Three (3) of the June 2001 Orders for failure to remove at least 60,000 scrap tires by January 1, 2002.
 - h. Order Number Four (4) of the June 2001 Orders for failure to establish individual scrap tire storage piles with a maximum two thousand five hundred (2,500) feet basal area and to establish fire lanes by December 20, 2001.

This inspection was documented in letters sent to Respondent Woosley via certified

mail and to Respondent Benedict via regular mail dated March 15, 2002.

17. On June 19, 2002, Ohio EPA conducted an inspection of 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) (effective July 29, 1976) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(6)(a) (effective March 29, 2002) for failure to store scrap tires in piles no greater than two thousand five hundred (2,500) square feet in basal area and no greater than the amount specified in OAC Rule 3745-27-61(A) in total number.
 - d. OAC Rule 3745-27-60(B)(6)(d)¹ (effective March 29, 2002) for failure to separate scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
 - e. Order Number One (1) of the June 2001 Orders for failure to have implemented mosquito control measures in accordance with OAC Rule 3745-27-60(B)(8)(b) (effective March 29, 1996) and provide documentation of requisite mosquito control to Ohio EPA.
 - f. Order Number Two (2) of the June 2001 Orders for failure to submit evaluations on the effectiveness of the mosquito control measures for the months of July 2001, August 2001, September 2001, October 2001, April 2002 and May 2002.
 - g. Order Number Three (3) of the June 2001 Orders for failure to remove at least 90,000 scrap tires by April 1, 2002.
 - h. Order Number Four (4) of the June 2001 Orders for failure to establish individual scrap tire storage piles with a maximum two thousand five hundred (2,500) feet basal area and to establish fire lanes by December 20, 2001.

This inspection was documented in letters to Respondent Woosley via certified mail and to Respondent Benedict via regular mail dated June 26, 2002.

18. On the night of August 28, 2002, Ohio EPA performed mosquito trapping at the Property. The mosquito samples were sent to the Ohio Department of Health's Vector Borne Diseases Unit for identification and testing.
19. On October 8, 2002, Ohio EPA conducted an inspection of the Property and observed the following violations:

¹ Incorrectly cited in Notice of Violation letters as OAC Rule 3745-27-60(B)(6)(c).

- a. ORC Section 3734.03 for open dumping of solid waste.
- b. OAC Rule 3745-27-05(C) (effective July 29, 1976) for open dumping of solid waste.
- c. OAC Rule 3745-27-60(B)(6)(a) (effective March 29, 2002) for failure to store scrap tires in piles no greater than two thousand five hundred (2,500) square feet in basal area and no greater than the amount specified in OAC Rule 3745-27-61(A) in total number.
- d. OAC Rule 3745-27-60(B)(6)(d)² (effective March 29, 2002) for failure to separate scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
- e. Order Number One (1) of the June 2001 Orders for failure to have implemented mosquito control measures in accordance with OAC Rule 3745-27-60(B)(8)(b) (effective March 29, 1996) and provide documentation of requisite mosquito control to Ohio EPA.
- f. Order Number Two (2) of the June 2001 Orders for failure to submit evaluations on the effectiveness of the mosquito control measures for the months of July 2001 through October 2001, and from April 2002 through October 2002.
- g. Order Number Three (3) of the June 2001 Orders for failure to remove at least 150,000 scrap tires by October 1, 2002.
- h. Order Number Four (4) of the June 2001 Orders for failure to establish individual scrap tire storage piles with a maximum two thousand five hundred (2,500) feet basal area and to establish fire lanes by December 20, 2001.

This inspection was documented in letters to Respondents via certified mail dated October 30, 2002.

20. On December 9, 2002, the Ohio Department of Health notified Ohio EPA that the mosquito species *Culex pipiens* was identified from the August 28, 2002 trapping event. The identified species found at the Property is a known vector of the West Nile Virus.

The testing results were documented in letters to the Respondents dated January 13, 2003.

21. On July 2, 2003, Ohio EPA conducted an inspection of 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) (effective July 29, 1976) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(6)(a) (effective March 29, 2002) for failure to store

² Incorrectly cited in Notice of Violation letters as OAC Rule 3745-27-60(B)(6)(c).

- scrap tires in piles no greater than two thousand five hundred (2,500) square feet in basal area and no greater than the amount specified in OAC Rule 3745-27-61(A) in total number.
- d. OAC Rule 3745-27-60(B)(6)(d)³ (effective March 29, 2002) for failure to separate scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
 - e. Order Number One (1) of the June 2001 Orders for failure to have implemented mosquito control measures in accordance with OAC Rule 3745-27-60(B)(8)(b) (effective March 29, 1996) and provide documentation of requisite mosquito control to Ohio EPA.
 - f. Order Number Two (2) of the June 2001 Orders for failure to submit evaluations on the effectiveness of the mosquito control measures for the months of July 2001 through October 2001, April 2002 through November 2002, and April 2003 through July 2003.
 - g. Order Number Three (3) of the June 2001 Orders for failure to remove at least 240,000 scrap tires by July 1, 2003.
 - h. Order Number Four (4) of the June 2001 Orders for failure to establish individual scrap tire storage piles with a maximum two thousand five hundred (2,500) feet basal area and to establish fire lanes by December 20, 2001.

This inspection was documented in letters to Respondents via certified mail dated July 16, 2003.

- 22. As of October 24, 2003, the Ohio Department of Health had confirmed the presence of West Nile Virus in Morrow County.
- 23. Given the proximity of Respondents' scrap tire pile to the City of Mount Gilead, the confirmed presence of West Nile Virus in Morrow County, the presence of mosquitoes that are known vectors of West Nile Virus, the proximity of the scrap tire pile to U.S. Route 42, the potential of a tire fire that could obscure the road, and in consideration of the effects of a tire fire that could adversely impact waters of the state, the Director has determined that the accumulation of scrap tires on Respondents' Property 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

³ Incorrectly cited in Notice of Violation letters as OAC Rule 3745-27-60(B)(6)(c).

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

Respondents 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 throughout the mosquito breeding season at the Property in accordance with the provisions of OAC Rules 3745-27-60(B)(8) and (B)(9) (effective March 29, 2002). Respondents shall provide documentation of the requisite mosquito control records to Ohio EPA Central District Office within ten (10) days after each application of the registered pesticide or larvicide.
2. Not later than thirty (30) 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) (effective March 29, 2002).
3. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of all scrap tires 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 scrap tire transporter:
 - a. to a scrap tire storage, monofill, monocell, or recovery facility which is operating in accordance with ORC Chapter 3734 and the rules adopted thereunder; or
 - b. to a scrap tire storage, monofill, monocell, or recovery facility in another state operating in compliance with the laws of that state; or
 - c. to any other solid waste disposal facility in another state that is operating in accordance with the laws of that state and that is authorized to accept scrap tires for disposal; or
 - d. to a location authorized by the Director to beneficially use scrap tires, in accordance with OAC Rule 3745-27-78 (effective March 29, 2002).

4. Respondents 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 shall forward such documentation to Ohio EPA within seven (7) days after completion of Order Number 3.
5. Respondents shall continue to comply with Orders No. 1 and 2 above until such time as all scrap tires have been removed from the Property.
6. In accordance with ORC Section 3734.85(A), if Respondents fail to comply with these Orders within one hundred twenty (120) days after the issuance of these Orders, the Director shall take such actions as the Director considers reasonable and necessary to remove and properly manage the accumulation of scrap tires at the Property.
7. If the Director removes the scrap tires from the Property, Respondents 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.
8. In accordance with ORC Section 3734.85(A), upon written request of Respondents, the Director may, in his sole discretion, extend the time for compliance with these Orders if the request demonstrates that Respondents have acted in good faith to comply with these Orders.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when each Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that each Respondent has performed all obligations under these Orders and the Chief 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 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 each Respondent: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted individually by each Respondent to Ohio EPA and

shall be signed by the Respondent submitting the certification.

VII. 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 Respondents.

VIII. NOTICE

All documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Central District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor
3232 Alum Creek Drive
Columbus, Ohio 43207-3417

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

IX. 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.

X. 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:

Ohio Environmental Protection Agency

Christopher Jones, Director

Date