

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Spring Grove Cemetery Assoc.	:	<u>Director's Final Findings</u>
1300 Lisbon Street	:	<u>and Orders</u>
East Liverpool, Ohio 43920	:	

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Spring Grove Cemetery Assoc. ("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 the Property (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 has determined the following findings:

1. Respondent is the owner of a 15.53 acre parcel of land (the "Property"), which is identified as parcel number 3650031000 by the Columbiana County Auditor, and is located on the west side of Lisbon Street, approximately 0.6 miles north of the Ohio River in the City of East Liverpool (the "Property").
2. Respondent is a "person" 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 10,000 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)(6) (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 waste" 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 Rule 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 June 27, 2000, Ohio EPA conducted an inspection of the Property in response to a complaint of alleged illegal dumping of scrap tires and observed the following violations:
 - a. OAC Rule 3745-27-05(C) (effective July 29, 1976) for conducting, permitting, or allowing open dumping of solid waste.
 - b. OAC Rule 3745-27-60(B)(6) (effective March 29, 1996) for failure to properly store scrap tires.
 - c. OAC Rule 3745-27-60(B)(8) (effective March 29, 1996) for failure to provide mosquito control.

This inspection was documented in a letter to Respondent dated July 12, 2000.

13. On April 2, 2001, Ohio EPA conducted an inspection of the Property and observed the following violations:
 - a. OAC Rule 3745-27-60(B)(1) (effective March 29, 1996) for failure to maintain sufficient drainage such that water does not collect in the area where scrap tires are stored.
 - b. OAC Rule 3745-27-60(B)(6) (effective March 29, 1996) for failure to properly store scrap tires.
 - c. OAC Rule 3745-27-60(B)(8) (effective March 29, 1996) for failure to provide mosquito control.
 - d. ORC Section 6111.04 for failure to prohibit pollution to waters of the state.

This inspection was documented in a letter to Respondent dated April 25, 2001.

14. On April 26, 2001, Ohio EPA received another complaint regarding the open dumping of scrap tires at the Property. The complainant expressed a concern of the potential threat of the spread of West Nile Virus by mosquitoes at the Property.
15. On May 13, 2001, Respondent replied to Ohio EPA's April 25, 2001 letter. This response was signed by Virginia E. Myler, secretary for Respondent, and stated that conditions at the Property had not changed since the last inspection.
16. On March 18 and March 25, 2003, Ohio EPA conducted two separate inspections of the Property and observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) (effective July 29, 1976) for open dumping of approximately 10,000 scrap tires.
 - b. OAC Rule 3745-27-60(B)(8) (effective March 29, 1996) for failure to provide mosquito control.

These inspections were documented in an letter to Respondent dated March 31, 2003.

17. On April 9, 2003, Respondent replied to Ohio EPA's March 31, 2003 letter. This response was signed by Virginia E. Myler, secretary of Respondent, and stated that conditions at the Property had not changed since the last inspection.
18. On June 5, 2003, Ohio EPA conducted an inspection of the Property and observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) (effective July 29, 1976) for open dumping of approximately 10,000 scrap tires.
 - c. OAC Rule 3745-27-60(B)(8) (effective March 29, 2002) for failure to provide mosquito control.

During this inspection, both mosquito larvae and pupae were observed in the scrap tires. Adult mosquitoes in large numbers were also observed. Samples of mosquito larvae and pupae were collected for identification and testing. A mosquito gravid trap was also set for the purpose of collecting adult mosquitoes.

This inspection was documented in a letter to Respondent dated June 10, 2003.

19. On June 6, 2003, Ohio EPA returned to the Property to collect samples from the mosquito gravid trap set the previous night. The specimens collected were then sent to the Ohio Department of Health's Vector-borne Disease Unit for identification and testing.
20. On June 20, 2003, the Ohio Department of Health notified Ohio EPA that mosquito species of *O. japonicus*, *O. triseriatus*, and *Culex* were identified. The identified species found at the Property are known vectors of disease transmission, including West Nile Virus.
21. On August 14, 2003, Ohio EPA conducted an inspection of the Property and observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C)(effective July 29, 1976) for open dumping of approximately 10,000 scrap tires.
 - b. OAC Rule 3745-27-60(B)(8) (effective March 29, 2002) for failure to provide mosquito control.

This inspection was documented in a letter to Respondent dated August 20, 2003.

22. 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. 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.”

23. As of December 31, 2003, there are at least two confirmed cases of West Nile Virus in Columbiana County.
24. Given the proximity of Respondent's scrap tire pile to the City of East Liverpool and to sensitive sub-populations of schools, a hospital and a nursing home, the confirmed presence of West Nile Virus in Columbiana County, the presence of mosquitoes that are known vectors of West Nile Virus at the Property, and 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 Respondent's Property constitutes a danger to the public health or safety or to the environment.

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 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). Respondent shall provide documentation of the requisite mosquito control records to Ohio EPA Northeast 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, Respondent 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, Respondent 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 transporter:

- a. to a scrap tire storage, monocell, monofill, or recovery facility 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 the 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. Respondent shall obtain receipts from the registered transporter and the authorized scrap tire facility or solid waste disposal facility, indicating weight, volume and number of scrap tires transported and shall forward such documentation to Ohio EPA within seven (7) days after completion of Order No. 3.
 5. Respondent shall continue to comply with Order Nos. 1 and 2 above until such time as all scrap tires have been removed from the Property.
 4. In accordance with ORC Section 3734.85(A), if Respondent fails to comply with these Orders within one hundred and twenty days (120) after the effective date of these Orders, Respondent shall provide the Director and his employees, representatives and contractors with access to the Property to perform whatever measures the Director considers reasonable and necessary to remove and properly manage the accumulation of scrap tires at the Property.
 5. If the Director removes the scrap tires from the Property, 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 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.
 6. In accordance with ORC Section 3734.85(A), upon written request of Respondent, the Director may, in his sole discretion, extend the time for compliance with these Orders if the request demonstrates that Respondent has acted in good faith to comply with these Orders.

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 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 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: "Spring Grove Cemetery Assoc. hereby certifies 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 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 Respondent.

VIII. 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
Attn: Unit Supervisor
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969

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 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.

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