

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAY 10 2006

INTERNAL DIRECTOR'S JOURNAL

In the Matter Of:

Deborah S. Long
6738 Garrison-Spurling Road
Pleasant Plain, OH 45162

: Director's Final Findings
: and Orders
:

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Deborah S. Long (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 BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent, or of the Property (as hereinafter defined) owned by the Respondent 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 defined 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 multiple parcels of land, located at 6738 Garrison-Spurling Road, Pleasant Plain, Clermont County, Ohio which are identified in Deed Record Volume 680, page 294 in the Clermont County Recorder's Official Records dated June 15, 1983 (the "Property"). The Property is further identified as Clermont County Auditor parcel numbers 473403J078, 473403J098, and 473403J122.
2. Respondent is a "person" as that term is defined in ORC Section 3734.01 and Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
3. There are currently an estimated 750 scrap tires illegally disposed of on the Property.

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

James Jackson 5-10-06

4. The Property is neither licensed nor permitted as a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapter 3745-27.
5. 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."
6. Scrap tires are included in the definition of "solid waste" under OAC Rule 3745-27-01(S)(24).
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 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).
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. On September 6, 2005, the Clermont County Health Department ("CCHD") conducted a mosquito sampling event at the Property. A mosquito gravid trap was set for purpose of collecting adult mosquitos and left overnight. A total of forty (40) specimens were collected and sent to the Ohio Department of Health's Vector-borne Disease Unit for identification and testing.
12. On September 19, 2005, Ohio EPA and CCHD conducted a joint inspection of the Property and observed the following violations:
 - a. OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - b. ORC Section 3734.03 for open dumping of solid waste.

- c. OAC Rule 3745-27-60(B)(1)¹ for failure to maintain sufficient drainage such that water does not collect in the scrap tire storage area.
- d. OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control measures.

This inspection was documented in a Notice of Violation ("NOV") letter from Ohio EPA to Respondent dated September 27, 2005.

- 13. On September 27, 2005, the Ohio Department of Health notified the CCHD that mosquito species *Culex* were identified from the September 6 sampling event. The identified species found at the Property tested positive for West Nile Virus.
- 14. By Board Order effective October 12, 2005, the CCHD ordered Respondent to:
 - a. Immediately implement mosquito control measures.
 - b. Establish scrap tire storage piles and fire lanes pursuant to OAC Rule 3745-27-60(B)(1) through (6) within thirty days.
 - c. Begin to lawfully remove, transport and dispose of all scrap tires within thirty days and provide receipts to CCHD.
 - d. Submit monthly progress reports every month for the previous calendar month until all scrap tires are removed.
- 15. On November 16, 2005, Ohio EPA and CCHD conducted a joint inspection of the Property and observed the following violations:
 - a. Failure to comply with the October 12, 2005 Clermont County Board Orders².
 - b. OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - c. ORC Section 3734.03 for open dumping of solid waste.
 - d. OAC Rule 3745-27-60(B)(1)³ for failure to maintain sufficient drainage such that water does not collect in the scrap tire storage area.
 - e. OAC Rule 3745-27-60(B)(6)(e) for failure to keep fire lanes free of combustible material.
 - f. OAC Rule 3745-27-60(B)(6)(f) for failure to allow emergency vehicle access.
 - g. OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control measures.
 - h. OAC Rule 3745-27-60(B)(9) for failure to apply a mosquito adulticide and/or larvicide.
 - i. OAC Rule 3745-27-60(B)(10) for failure to maintain mosquito control records.
 - j. OAC Rule 3745-27-61(A) for failure to apply for a scrap tire facility registration certificate.

This inspection was documented in two separate NOV's from Ohio EPA and CCHD to Respondent dated November 30 and December 7, 2005, respectively.

¹Cited more generally as OAC Rule 3745-27-60(B).

²Cited by Clermont County Health Department only.

³See Footnote 1.

16. On February 1, 2006, Ohio EPA and CCHD conducted a joint inspection of the Property and observed the following violations:
 - a. OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - b. ORC Section 3734.03 for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(1)⁴ for failure to maintain sufficient drainage such that water does not collect in the scrap tire storage area.
 - d. OAC Rule 3745-27-60(B)(6)(e) for failure to keep fire lanes free of combustible material.
 - e. OAC Rule 3745-27-61(A) for failure to apply for a scrap tire facility registration certificate.

This inspection was documented in an NOV from Ohio EPA to Respondent dated February 14, 2006.

17. To date, Respondent has failed to comply with the October 12, 2005 CCHD Board Order.
18. Pursuant to OAC Rule 3745-27-60(B), a nuisance, a hazard to public health and safety, and a fire hazard exists at the Property.
19. Given the proximity of Respondent's scrap tire pile to Pleasant Plain, the confirmed presence of West Nile Virus on the Property, and the potential that a tire fire could obscure major transportation routes, and in consideration that the effects of a tire fire could adversely impact waters of the state, the Director has determined that the unlawful 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, 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."
21. ORC Section 3734.85 further provides, "...[i]f 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,

⁴Cited more generally as OAC Rule 3745-27-60(B).

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.”

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(B)(8). Respondent shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(B)(10) to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.
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).
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 scrap tire transporter:
 - a. to a scrap tire storage, monofill, monocell, or recovery facility licensed under ORC Section 3734.81; or
 - b. to such a facility in another state operating in compliance with the laws of that state in which it is located; or
 - c. to any other solid waste disposal facility in another state that is operating in compliance with the laws of that state.
4. Respondent shall obtain receipts from the registered transporter and the facility, indicating weight, volume or number of scrap tires received. Respondents shall forward such documentation to Ohio EPA within ten (10) days after completion of Order No. Three (3).
5. Respondent shall continue to comply with Order Nos. One (1) and Two (2) above until such time as all scrap tires have been removed from the Property.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrate 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 : "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 and/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 and/or the Property.

IX. NOTICE

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

Ohio Environmental Protection Agency
southeast District Office
Division of Solid and Infectious Waste Management
Attn: DSIWM Unit Supervisor
401 E. Fifth Street
Dayton, OH 45402-2911

and to:

Clermont County General Health District
2275 Bauer Road, Suite 300
Batavia, OH 45103-1930
Attn: Environmental Health Director

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

X. RESERVATION OF RIGHTS

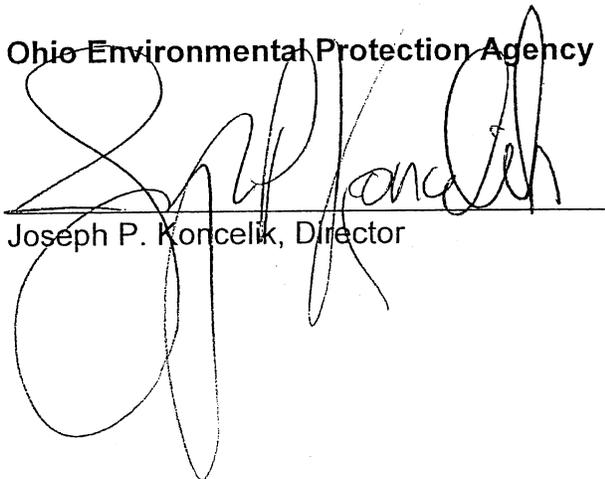
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance 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.

XI. 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



Joseph P. Koncelik, Director