OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Andover Realty Group Limited Partnership Serrol James Dubin, General Partner 5969 Lake Street P.O. Box 274 Kingsville, OH 44048	: : : : :	Director's Final Findings and Orders

Respondent

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.

By: _____ **Date:** 7/23/07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Andover Realty Group Limited Partnership (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. Andover Realty Group Limited Partnership ("Andover Realty Group") is the owner of real property, located at Sweet Road, Monroe Township, Ashtabula County, Ohio

and claims title by or through instrument recorded in Volume 215, page 2291, of the Ashtabula County Recorder's Official Records (the "Property"). On November 2, 2004, the Property was subsequently transferred from Andover Realty Group to Andover Realty Group, as recorded in Volume 316, page 2007 of the Ashtabula County Recorder's Official Records.

2. Serrol James Dubin is the sole general partner and statutory agent for Andover Realty Group.

3. 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).

4. There are currently an estimated 20,000 scrap tires illegally disposed of on the Property.

5. The Property is neither licensed nor permitted as a scrap tire collection facility or solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapter 3745-27.

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. Scrap tires are included in the definition of "solid waste" under OAC Rule 3745-27-01(S)(24).

8. 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."

9. 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."

10. 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).

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 21, 2004, the Ashtabula County Health Department ("ACHD") issued Board Orders that required Andover Realty Group to do the following:
    a. Legally remove and dispose of all scrap tires by September 15, 2004 ("Board Order No. 1").
    b. Arrange for a registered scrap tire transporter to transport all scrap tires to a scrap tire disposal facility ("Board Order No. 2").
    c. Submit disposal receipts from a scrap tire transporter to ACHD by September 22, 2004 ("Board Order No. 3").
    d. Submit monthly progress reports to ACHD that documents removal activities ("Board Order No. 4").
    e. Implement mosquito control measures in accordance with OAC Rule 3745-27-60(B) ("Board Order No. 5").
    f. Provide copies of mosquito control records within ten days after each application ("Board Order No. 6").
    g. Establish, by August 14, 2004, scrap tire storage piles and fire lanes in accordance with OAC Rule 3745-27-60 (B)(1) through (B)(6) ("Board Order No. 7").

13. On September 15, 2004, ACHD conducted an inspection of the Property and observed the following violations:
    a. ORC Section 3734.02(C) for establishing a solid waste facility without submitting an application for a permit.
    b. ORC Section 3734.03 for open dumping of solid waste.
    c. OAC Rule 3745-27-05(C) for open dumping of solid waste.
    d. OAC Rule 3745-27-60(B)(6)(a) for having scrap tire piles greater than 2500 square feet in basal area.
    e. OAC Rule 3745-27-60(B)(6)(f)[1] for failure to keep fire lanes free of combustible material.
    f. OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control measures.
    g. Failure to comply with Order Nos. 1, 2, 4, 5, 6, and 7 of the July 21, 2004 Board Orders.[2]

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[1]Mis-cited as a violation of OAC Rule 3745-27-60(B)(6)(e).

[2]More generally cited as a violation of the July 21, 2004 Board Orders.

This inspection was documented in a Notice of Violation ("NOV") letter from ACHD to Andover Realty Group dated November 1, 2004.

14. On July 6, 2005, 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) for open dumping of solid waste.
    c. OAC Rule 3745-27-60(B)(6)(a) for having scrap tire piles greater than 2500 square feet in basal area.
    d. OAC Rule 3745-27-60(B)(6)(f) for failure to maintain emergency vehicle access to and around the scrap tire piles.
    e. OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control measures.

    This inspection was documented in separate Notices of Violation ("NOV") letters from Ohio EPA to Andover Realty Group, c/o Serrol James Dubin and to Andover Realty Group dated September 8, 2005. Also documented was the failure to comply with the July 21, 2004 ACHD Board Orders.

15. On February 1, 2006, Ohio EPA and ACHD conducted a joint 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) for open dumping of solid waste.
    c. OAC Rule 3745-27-60(B)(6)(a) for having scrap tire piles greater than 2500 square feet in basal area.
    d. OAC Rule 3745-27-60(B)(6)(f) for failure to maintain emergency vehicle access to and around the scrap tire piles.

    This inspection was documented in separate Notices of Violation ("NOV") letters from Ohio EPA to Andover Realty Group c/o Serrol James Dubin and to Andover Realty Group dated March 3, 2006. Also documented was the failure to comply with the July 21, 2004 ACHD Board Orders.

16. On July 16, 2006, September 6, 2006, December 22, 2006, and February 28, 2007, 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) for open dumping of solid waste.
    c. OAC Rule 3745-27-60(B)(6)(a) for having scrap tire piles greater than 2500 square feet in basal area.
    d. OAC Rule 3745-27-60(B)(6)(f) for failure to maintain emergency vehicle access to and around the scrap tire piles.

This inspection was documented in separate Notices of Violation ("NOV") letters from Ohio EPA to Andover Realty Group c/o Serrol James Dubin and to Andover Realty Group dated April 25, 2007. Also documented was the failure to comply with the July 21, 2004 ACHD Board Orders.

17. On December 12, 2006, the Property was divided into a 67.655 acre residual parcel ("Residual Parcel") and a 41.310 acre split parcel ("Split Parcel"); both parcels still contain scrap tires.

18. Andover Realty Group Limited Partnership still remains the owner of the Residual Parcel as well as the Split Parcel. In the Ashtabula County Recorder's Official Records, the Residual Parcel (now Auditor parcel number 310270000200) is described in Volume 395, Page 132 and the Split Parcel (now Auditor parcel number 310270000202) is described in Volume 395, Page 130.

19. As of November 24, 2006, Ashtabula County had one confirmed case of West Nile Virus.

20. Given the proximity of Respondent's scrap tire pile to Kingsville and sensitive sub populations such as pre-schools, elementary schools and a high school, the confirmed presence of West Nile Virus in the County, and the potential that a tire fire could obscure major transportation routes such as State Route 7, 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.

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, 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."

22. 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, 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 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 Serrol James Dubin, a general partner of 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, Respondents 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 Respondents 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
Northeast District Office
Division of Solid and Infectious Waste Management
Attn: DSIWM Unit Supervisor
2110 E. Aurora Road
Twinsburg, OH 44087

and to:

Ashtabula County Health Department
12 West Jefferson Street
Jefferson, OH 44047-1096
Attn: Raymond J. Saporito, Health Commissioner

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 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.

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

Chris Korleski, Director