State of Ohio Environmental Protection Agency

STREET ADDRESS:

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P.O. Box 1049
Columbus, OH 43216-1049

April 23, 2008

Norman Coffer
Lucious Coffer
10922 Woodstock Avenue
Cleveland, Ohio 44104-2557

Re: Director's Final Findings & Orders

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

You are hereby notified that this action of the Director of Environmental Protection (Director) is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Appeals Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of $70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, Ohio 43215

Sincerely,

Kimberly Reese

Kimberly Reese
Systems Management Unit
Division of Solid & Infectious Waste Management

Enclosure: Director's Final Findings and Orders

cc: Ed Gortner, CO, DSIWM
Lynn Sowers, DSIWM, NEDO
Jeff Hurdley, DSIWM, Legal

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

O.E.P.A.
APR 23 2008
DIRECTOR'S JOURNAL

In the Matter Of:

Norman Coffer	:	Director's Final Findings
Lucious Coffer	:	and Orders
10922 Woodstock Avenue	:	
Cleveland, Ohio 44104-2557	:	

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.

Respondents

By: _____ Date: 4-23-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Norman Coffer and Lucious Coffer (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

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' 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. Respondents are the former owners of a parcel of land, located at 2285 Ashland Road, Cleveland, Cuyahoga County, Ohio, which is identified in the Cuyahoga County Recorder's Official Records as Cuyahoga County Recorder Alternative Filings Number ("AFN") 200409020378 (the "Property"). The Property is further identified as Cuyahoga County Auditor permanent parcel number 118-20-001.

2. Respondent Norman Coffer transferred the Property to Respondent Lucious Coffer on December 29, 1994. Respondent Norman Coffer remained affiliated with a business on the Property which resulted in the accumulation of tires on the Property.

3. Respondent Lucious Coffer transferred the Property back to Respondent Norman Coffer on January 10, 2001.

4. Respondents are each 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).

5. There are currently an estimated 10,000 scrap tires illegally disposed of on the Property as well as other mixed solid waste. Respondents are jointly responsible for the disposal of the waste on the Property.

6. The Property is neither licensed nor permitted as a scrap tire collection facility, a solid waste disposal facility, a junk yard, or any type of legitimate recycling facility.

7. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24).

8. 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."

9. 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 is occurring or 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."

10. OAC Rule 3745-27-01(O)(4)(b) defines open dumping as, "...[t]he 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."

11. OAC Rule 3745-27-60(B) provides that "[t]he storage of scrap tires in any amount outside or inside a . . . building is 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) - (11)]."

12. Scrap tires, if not properly managed, may become a breeding ground for mosquitoes. Mosquitoes are a common disease vector for Yellow Fever, St. Louis encephalitis, La Crosse encephalitis, West Nile Virus and Dengue Fever.

13. The City of Cleveland pursued legal action against Respondents Lucious Coffer and Norman Coffer to have all scrap tires removed from the Property. These legal actions resulted in fines and orders to clean up the property; however, the City was unable to secure Respondents' cooperation in removing all of the scrap tires from the Property.

14. On February 17, 1999 Ohio EPA conducted an inspection of the Property with the City of Cleveland Department of Health and observed 50,000 scrap tires in 14 piles on the Property.

Violations observed during inspection were documented as follows:

a. Notice of Violation from City of Cleveland to Lucious Coffer dated February 19, 1999.
   - OAC 3745-27-60(B)(1) for failing to maintain sufficient drainage in the area where scrap tires are stored.
   - OAC 3745-27-60(B)(3) for failing to separate scrap tire containers from buildings and structures, rev.'d OAC 3745-27-60(B)(4)(a) [eff. 11-01-07].
   - OAC 3745-27-60(B)(5) for covering scrap tires with soil, rev.'d OAC 3745-27-60(B)(4) [eff. 11-01-07].
   - OAC 3745-27-60(B)(6)(a) for exceeding allowable square footage of tires at base, rev.'d OAC 3745-27-60(B)(7)(a) [eff. 11-01-07].
   - OAC 3745-27-60(B)(6)(c) - (e) for failing to maintain fire lanes, OAC 3745-27-60(B)(7)(c) - (e) [eff. 11-01-07].

b. Notice of Violation from Ohio EPA to Lucious Coffer dated April 6, 1999.
   - OAC 3745-27-60(B)(1) for failing to maintain sufficient drainage in the area where scrap tires are stored.
   - ORC Section 3734.03 for open dumping of solid waste.

15. On September 2, 2004 Saady A. Hashem and Fedwa S. Abouhashem purchased the Property at a Forfeited Land Sale.

16. On February 24, 2005 Ohio EPA inspected the Property, observed scrap tires on the Property, and noted 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.

This inspection was documented in an NOV letter from Ohio EPA to Respondent Lucious Coffer dated April 1, 2005.

17. As of November 20, 2007, the Ohio Department of Health has confirmed six (6) human cases of West Nile Virus in Cuyahoga County.

18. Given the confirmed presence of West Nile Virus in Cuyahoga County and the proximity of the scrap tire pile located on the Property to sensitive sub-populations such as elementary schools and hospitals, and given the proximity of the Property to an airport, and the potential that a tire fire could obscure major highways such as Interstates 77, 90, and 490, and in consideration of the adverse impact that a tire fire could have on Lake Erie and other 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.

19. ORC Section 3734.85(A) 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."

20. 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

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 at the Property in accordance with the provisions of OAC Rule 3745-27-60(C). Respondents shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3), to Ohio EPA Northeast District Office within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.

2. Upon the effective date of these Orders, Respondents 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, Respondents shall establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B)(1) through (11).

4. Not later than (60) days after the effective date of these Orders, Respondents shall remove or cause the removal of all solid waste, excluding scrap tires, from the Property and dispose of all solid waste, excluding scrap tires, at a licensed solid waste disposal facility. Respondents shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of solid waste disposed of, excluding scrap tires. Respondents shall forward such documentation to Ohio EPA Northeast District Office on a monthly basis by the 10th day of each month.

5. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents 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, 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, Respondents shall remove, transport and dispose of at least 1000 scrap tires within 14 days, 2500 scrap tires within 30 days, and 2500 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. Respondents shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume and number of scrap tires received. Respondents shall forward such documentation to Ohio EPA Northeast District Office on a monthly basis by the 10th day of each month.

6. Respondents shall submit monthly progress reports until all scrap tires are removed from the Property. Respondents' monthly progress reports, due to Ohio EPA Northeast District Office by the 10th day of each month, shall summarize Respondents' 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 10th day of the month immediately following the month that these Orders become effective.

7. Respondents 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.

8. To the extent that the Property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondents, Respondents shall use their best efforts to secure from such persons access for Respondents and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondents shall be provided to Ohio EPA upon request. If any access required to implement these Orders is not obtained within seven (7) days after the effective date of these Orders, or within seven (7) days after the date Ohio EPA notifies Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify Ohio EPA in writing of the steps Respondents have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 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 Respondents: "We certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondents to Ohio EPA and shall be signed by Respondents.

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 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 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 Respondents have acted in good faith to comply with the order.

X. NOTICE

All documents required to be submitted by Respondents 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 East Aurora Road
Twinsburg, Ohio 44087

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 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.

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