



State of Ohio Environmental Protection Agency

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Columbus, OH 43216-1049

May 9, 2008

Lakeside Industrial Park & Rail Yard, Inc.  
P.O. Box 2450  
Ashtabula, Ohio 44005-2450

**Re: Unilateral 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  
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

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

OHIO E.P.A.  
MAY -9 2008  
ENTERED DIRECTOR'S JOURNAL

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Lakeside Industrial Park & Rail Yard, Inc. :  
P.O. Box 2450 :  
Ashtabula, Ohio 44005-2450 :

Director's Final Findings  
and Orders

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.

Respondent

By:  Date: 5/9/08

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Lakeside Industrial Park & Rail Yard, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13, 3714.12, and 6111.03.

**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 Respondent or 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 defined in ORC Chapters 3734 and 3714 and the rules promulgated hereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of a 36.341 acre parcel of land that was identified in the records of the Ashtabula County Recorder's Office as parcel number 03-01400-01100. The parcel is located at 2101 State Road, Ashtabula, in Ashtabula County, Ohio (the "Property").
2. Respondent is 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).

3. Currently an estimated 5,000 scrap tires, 4,000 yds<sup>3</sup> of industrial waste, and 20,000 yds<sup>3</sup> of commingled solid waste and construction and demolition debris ("C&DD") have been disposed on the Property.
4. The Property is neither licensed nor permitted as a solid waste disposal facility nor licensed as a C&DD facility in accordance with ORC Chapters 3714. and 3734. and OAC Chapters 3745-27, 3745-37 and 3745-400.
5. The open dumping of scrap tires and other solid waste on the Property is a violation of ORC Section 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."
6. On June 20, 2001, Ohio EPA received an anonymous complaint stating that wastes such as barrels, pipes, and transformers were being buried on the Property.
7. Ohio EPA and Ashtabula County Health Department ("ACHD") conducted an inspection of the Property on June 29, 2001. In correspondence dated July 10, 2001, Ohio EPA notified Respondent of the following violations:
  - a. ORC Rule 3734.02(C) and OAC Rule 3745-27-05(C)(effective 7-29-76) for open dumping of scrap tires and other solid waste;
  - b. OAC Rule 3745-400-04(D)(effective 9-30-96) for illegal disposal of C&DD;
  - c. OAC Rule 3745-27-60(B)(8)(effective 3-29-96) for failure to control mosquitoes.
8. Ohio EPA and ACHD conducted an inspection of the Property on July 27, 2001. In correspondence dated August 2, 2001, Ohio EPA notified Respondent of the following violations:
  - a. ORC Rule 3734.02(C) and OAC Rule 3745-27-05(C)(effective 7- 29-76) for open dumping of scrap tires and other solid waste;
  - b. OAC Rule 3745-400-04(D)(effective 9-30-96) for illegal disposal of C&DD;
  - c. OAC Rule 3745-27-60(B)(8)(effective 3-29-96) for failure to control mosquitoes.

- d. ORC Rule 6111.04 for polluting waters of the state by allowing waste to enter into an adjacent wetland.

In addition to the violations noted above, the August 2, 2001 Notice of Violation ("NOV") informed Respondent that Ohio EPA had observed Respondent's employee burying solid waste on the Property. Ohio EPA further informed Respondent that burial was not an appropriate disposal method and that all waste must be removed and disposed at a licensed solid waste facility.

ACHD also notified Respondent of the violations noted above in correspondence dated January 14, 2002.

9. In response to the July 10, 2001, Notice of Violation ("NOV") Ohio EPA received correspondence from Respondent dated August 8, 2001, stating in part, the following:
  - a. Respondent only recently purchased the Property. Prior to the purchase, the Property was owned by ACME Scrap Iron and Metal Company;
  - b. Respondent indicated that all solid waste, industrial waste, and C&DD had been accumulated during the past 25 years by the previous owner and Respondent was not responsible for placing the various wastes on the Property;
  - c. Respondent acknowledged its obligation to remove the solid waste, C&DD, and industrial waste and indicated the wastes would be removed according to the following schedule:
    - i. Solid waste deposited near the front of the Property would be removed in one to three years;
    - ii. The remaining solid waste on the Property would be removed over the subsequent seven to ten years; and
    - iii. The industrial waste would be removed within 180 days.
10. ACHD conducted an inspection of the Property on February 19, 2002. In correspondence dated February 26, 2002, ACHD notified Respondent of the following violations:
  - a. ORC Rule 3734.02(C) and OAC Rule 3745-27-05(C)(effective 7-29-76) for open dumping of scrap tires and other solid waste;
  - b. OAC Rule 3745-400-04(D)(effective 9-30-96) for illegal disposal of C&DD;

In addition to the violations noted above, ACHD informed Respondent that additional solid waste including bags of household waste, carpeting, and floor tile had been disposed on the Property since ACHD's last inspection.

11. In response to the NOV dated February 26, 2002, ACHD received correspondence from Respondent dated February 27, 2002, stating it was not responsible for the additional waste placed on the Property. Respondent indicated the source of the waste had been identified and appropriate measures had been implemented to insure future compliance.
12. Ohio EPA conducted an inspection of the Property on March 8, 2002. In correspondence dated May 7, 2002, Ohio EPA notified Respondent of the following violations:
  - a. ORC Rule 3734.03 and OAC Rule 3745-27-05(C)(effective 7-29-76) for open dumping of scrap tires and other solid waste;
  - b. ORC Rule 3734.02(C) for establishing a solid waste facility without a permit;
  - c. OAC Rule 3745-37-01(A) for conducting solid waste landfill operations without a license;
  - d. OAC Rule 3745-400-04(D)(effective 9-30-96) for illegal disposal of C&DD;
13. In response to the May 7, 2002 NOV, Ohio EPA received correspondence from Respondent dated May 15, 2002, reiterating that the waste on the Property was present prior to its ownership and that the waste would be removed as stated in previous letters.
14. ACHD conducted an inspection of the Property on June 24, 2002. In correspondence dated July 5, 2002, ACHD notified Respondent of the following violations:
  - a. ORC Rule 3734.03 and OAC Rule 3745-27-05(C)(effective 7-29-76) for open dumping of solid waste;
  - b. ORC Rule 3734.02(C) for establishing a solid waste facility without a permit;
  - c. OAC Rule 3745-37-01(A) for conducting solid waste landfill operations without a license;
  - d. OAC Rule 3745-400-04(D)(effective 9-30-96) for illegal disposal of C&DD.
15. Ohio EPA conducted inspections of the Property on May 31, 2002, and June 17, 2002. In correspondence dated August 29, 2002, Ohio EPA notified Respondent of the following violations:

- a. ORC Rule 3734.03 and OAC Rule 3745-27-05(C)(effective 7-29-76) for open dumping of solid waste;
- b. ORC Rule 3734.02(C) for establishing a solid waste facility without a permit;
- c. OAC Rule 3745-37-01(A) for conducting solid waste landfill operations without a license;
- d. OAC Rule 3745-27-60(B)(8)(effective 3-29-02) for failure to control mosquitoes;
- e. OAC Rule 3745-400-04(D)(effective 9-30-96) for illegal disposal of C&DD;
- f. OAC Rule 3745-27-13 for filling and grading without authorization from the Director.

In addition to the above noted violations Ohio EPA informed Respondent that additional C&DD had been illegally accepted for disposal at the Property.

16. In response to the August 29, 2002, NOV Ohio EPA received correspondence from Respondent dated October 9, 2002 stating that, as noted in previous responses to NOV's from Ohio EPA, all waste was present on the Property prior to Respondent's ownership. Respondent indicated the additional waste noted in the NOV was actually waste that was relocated from an existing warehouse on the Property. Respondent did not consider such activities a violation as it did not create additional waste but simply consolidated the waste material to facilitate removal and allow for the leasing of the warehouse.
17. ACHD conducted an inspection of the Property on June 24, 2002. In correspondence dated October 9, 2002, ACHD Notified Respondent of the following violations:
  - a. ORC Rule 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste;
  - b. ORC Rule 3734.02(C) for establishing a solid waste facility without a permit;
  - c. OAC Rule 3745-37-01(A) for conducting solid waste landfill operations without a license;
  - d. OAC Rule 3745-400-04(B) for illegal disposal of C&DD.
18. In Response to the October 9, 2002 NOV, ACHD received correspondence from Respondent dated October 23, 2002 stating, in part, that the accumulation of solid waste on the Property had been previously addressed by numerous letters. Respondent also informed ACHD of the following:

- a. Respondent asserts that no new waste had been brought onto the site, and that existing waste had merely been consolidated to facilitate removal;
  - b. Respondent asserts that it has not conducted or permitted any open dumping of solid waste nor illegal disposal of C&DD. Therefore, Respondent asserts it has not committed any acts in violation of the statues listed in the NOV;
  - c. Respondent acknowledges its continuing responsibility to remove all solid waste from the Property.
19. Ohio EPA conducted an inspection of the Property on August 4, 2005. In correspondence dated August 26, 2005, Ohio EPA notified Respondent of the following violations:
  - a. ORC Rule 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste;
  - b. ORC Rule 3734.02(C) for establishing a solid waste facility without a permit;
  - c. ORC Rule 3734.05(A)(1) and OAC Rule 3745-37-01(A) for conducting solid waste landfill operations without a license;
  - d. OAC Rule 3745-27-60(B)(8)(effective 3-29-02) for failure to control mosquitoes;
  - e. OAC Rule 3745-400-04(B) for illegal disposal of C&DD.
  - f. OAC Rule 3745-27-13 for filling and grading without authorization from the Director.
  - g. ORC Rule 6111.04(A)(1) and OAC Rule 3745-1-04 for polluting waters of the state by allowing waste to enter into an adjacent wetland.
20. Ohio EPA conducted inspections of the Property on December 22, 2006, and February 28, 2007. In correspondence dated March 13, 2007, Ohio EPA notified Respondent of the following violations:
  - a. ORC Rule 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste;
  - b. ORC Rule 3734.02(C) for establishing a solid waste facility without a permit;
  - c. ORC Rule 3734.05(A)(1) and OAC Rule 3745-37-01(A) for conducting solid waste landfill operations without a license;

- d. OAC Rule 3745-27-60(B)(8)(effective 3-29-02) for failure to control mosquitoes;
  - e. OAC Rule 3745-400-04(B) for illegal disposal of C&DD.
  - f. OAC Rule 3745-27-13 for filling and grading without authorization from the Director.
  - g. ORC Rule 6111.04(A)(1) and OAC Rule 3745-1-04 for polluting waters of the state by allowing waste to enter into an adjacent wetland.
21. Ohio EPA conducted inspections of the Property on October 5, 2007, and November 29, 2007. In correspondence dated December 18, 2007, Ohio EPA notified Respondent of the following violations:
- a. ORC Rule 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste;
  - b. ORC Rule 3734.02(C) for establishing a solid waste facility without a permit;
  - c. ORC Rule 3734.05(A)(1) and OAC Rule 3745-37-01(A) for conducting solid waste landfill operations without a license;
  - d. OAC Rule 3745-27-60(B)(2) and(C)(1) for failure to control mosquitoes;
  - e. OAC Rule 3745-400-04(B) for illegal disposal of C&DD.
  - f. OAC Rule 3745-27-13 for filling and grading without authorization from the Director.
  - g. ORC Rule 6111.04(A)(1) and OAC Rule 3745-1-04 for polluting waters of the state by allowing waste to enter into an adjacent wetland.
22. To date, Respondent has not documented the removal of any scrap tires, industrial waste, or commingled solid waste and C&DD from the Property.
23. Ohio EPA conducted an inspection of the Property on May 1, 2008, and verified that the scrap tires, industrial waste, and commingled solid waste and C&DD remain on the Property in violation of Ohio's solid waste and C&DD laws.

## V. ORDERS

Respondent shall achieve compliance with ORC Chapters 3734., 3714., 6111. and the rules promulgated thereunder according to the following compliance schedule:

### **General Solid Waste Orders**

1. Within thirty (30) days after the effective date of these Orders, Respondent shall begin the removal of all solid waste including, but not limited to, solid waste dumped onto the ground, in the adjacent wetland and/or buried at the Property, and dispose of all solid waste, at a licensed solid waste disposal facility. At a minimum, Respondent shall remove one hundred fifty cubic yards (150 yd<sup>3</sup>) of solid waste within 60 days after the effective date of these Orders and shall continue to remove one hundred fifty cubic yards (150 yd<sup>3</sup>) of solid waste every 30 days, thereafter, until all solid waste is removed from the Property.
2. Respondent shall obtain receipts from the licensed solid waste disposal facility indicating weight and/or volume of solid waste disposed and shall forward such documentation to Ohio EPA Northeast District Office as an attachment to Respondent's monthly progress reports, which are required pursuant to Order No. 3 and which are due to Ohio EPA by the 10<sup>th</sup> of each subsequent month.
3. Respondent shall submit monthly progress reports beginning 60 days after the effective date of these Orders. Thereafter, the monthly progress reports shall be submitted every month for the previous calendar month until all solid waste, C&DD, industrial waste, and scrap tires are removed. Respondent's monthly progress reports, due to Ohio EPA by the 10<sup>th</sup> day of each month, shall summarize Respondent's efforts to comply with each of the requirements of Section V of these Orders.

### **C&DD Orders**

4. Within thirty (30) days after the effective date of these Orders, Respondent shall begin the removal of all C&DD including, but not limited to C&DD dumped onto the ground, in the adjacent wetland and/or buried at the Property, and dispose of all C&DD, at a licensed C&DD disposal facility or a licensed solid waste disposal facility. At a minimum, Respondent shall remove one hundred fifty cubic yards (150 yd<sup>3</sup>) of C&DD within 60 days after the effective date of these Orders and shall continue to remove one hundred fifty cubic yards (150 yd<sup>3</sup>) of C&DD every 30 days, thereafter, until all C&DD is removed from the Property.
5. Respondent shall obtain receipts from the licensed C&DD disposal facility or licensed solid waste landfill facility indicating weight and/or volume of C&DD disposed and shall forward such documentation to Ohio EPA Northeast District Office as an attachment to Respondent's monthly progress reports, which are required pursuant to Order No. 3.

### Industrial Waste Orders

6. Within thirty (30) days after the effective date of these Orders, Respondent shall begin the removal of all industrial waste from the Property and dispose of all industrial waste at a licensed municipal solid waste disposal facility or a licensed industrial solid waste landfill facility. At a minimum, Respondent shall remove one hundred cubic yards (100 yd<sup>3</sup>) of industrial waste within 60 days after the effective date of these Orders and shall continue to remove one hundred cubic yards (1000 yd<sup>3</sup>) of industrial waste every 30 days, thereafter, until all industrial waste is removed from the Property.
7. Respondent shall obtain receipts from the licensed municipal solid waste disposal facility or licensed industrial solid waste landfill facility indicating weight and/or volume of industrial waste disposed and shall forward such documentation to Ohio EPA Northeast District Office as an attachment to Respondent's monthly progress reports, which are required pursuant to Order No. 3.

### Scrap Tire Orders

8. 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(C)(1). Respondent shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3), to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.
9. 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 which is operating in accordance with ORC Chapter 3734. and the rules adopted there under; 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.

10. Respondent 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 Northeast District Office as an attachment to Respondent's monthly progress reports, which are required pursuant to Order No. 3
11. Respondent shall continue to comply with Order No. 8 above until such time as all scrap tires have been removed from the Property in accordance with Order No. 9 above.

#### **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: "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 a responsible official of Respondent. For purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president or his duly authorized representative, if such a representative is responsible for the overall operation of the Property.

#### **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, the operation of Respondent's 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.

### **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  
2110 East Aurora Road  
Twinsburg, Ohio 4087  
Attn: Unit Supervisor, DSIWM

and to:

Ashtabula County Health Department  
12 West Jefferson Street  
Jefferson, Ohio 44047-1096  
Attn: Health Commissioner

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

### **X. RESERVATION OF RIGHTS**

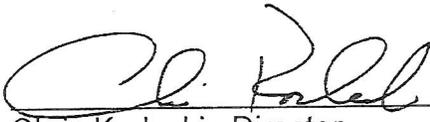
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance 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 Chapters 3714., 6111. 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 these 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