



State of Ohio Environmental Protection Agency

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

July 25, 2008

Walter Shepherd  
12860 St. Rt. 81  
Dunkirk, Ohio 45836

**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  
Systems Management Unit  
Division of Solid & Infectious Waste Management

Enclosure: Director's Final Findings and Orders

cc: Ed Gortner, CO, DSIWM  
Jeff Hurdley, OEPA- Legal  
Ed Merriman, NWDO, DSIWM

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

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.

JUL 25 2000

In the Matter Of:

ENTERED DIRECTOR'S JOURNAL

Walter Shepherd  
12860 St. Rt. 81  
Dunkirk, Ohio 45836

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:  
:

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: 7-25-00

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Walter Shepherd (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**

These Orders shall apply to and be binding upon Respondent and heirs and successors in interest liable under Ohio law. No change in ownership of the Property (as hereinafter defined) shall in any way alter Respondent's 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. Respondent is the owner of a parcel of land, located at State Route 30, Section 36, Madison Township, Hancock County, Ohio, which is identified in Deed Record Volume 802, Page 203, in the Hancock County Recorder's Official Record dated September 16, 1992 (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. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).

4. 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."
5. 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."
6. 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."
7. OAC Rule 3745-27-60(B) provides that "the 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 fire hazard unless the tires are stored in accordance with [the standards set forth within OAC Rule 3745-27-60(B)(1) through (11)].
8. 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.
9. OAC Rule 3745-27-61(A)(2)(a)(i) and (A)(3)(a) state that a premises where tires are sold at retail, and which has no more than one thousand (1,000) scrap tires present at any time in an unsecured, uncovered, outdoor location, is exempt from the requirement to obtain a Class II scrap tire collection facility registration certificate.
10. On the Property, there is currently a facility associated with a retail tire business.
11. However, there are currently an estimated 9,200 scrap tires illegally disposed of on the Property. Therefore, the Property does not meet the exemption from registration under OAC Rule 3745-27-61(A)(2)(a)(i) and (A)(3)(a).

12. According to OAC Rule 3745-27-01(S)(15), a scrap tire storage facility is defined as "any facility where whole scrap tires are stored prior to the scrap tires being transported to one of the destinations listed in paragraph (D)(8) of rule 3745-27-65 of the Administrative Code."
13. The Respondent holds neither a license nor a permit as a scrap tire collection facility or solid waste disposal facility for the Property in accordance with ORC Chapter 3734. and OAC Chapter 3745-27.
14. On December 6, 2005, Hancock County Health Department ("HCHD") and Ohio EPA inspected the Property and found the following violations:
  - a. ORC § 3724.81(A) for establishing a scrap tire storage facility without a license (3,000 scrap tires observed).
  - b. OAC Rule 3745-27-60(B)(6)(f) (currently at OAC Rule 3745-27-60(B)(7)(e)) for failure to provide sufficient fire lanes.
  - c. OAC Rule 3745-27-60(B)(8) (currently at OAC Rule 3745-27-60(C)) for failing to control mosquitoes.

The violations were documented in a Notice of Violation ("NOV") letter from HCHD to Mr. Shepherd dated December 12, 2005.

15. On February 10, 2006 the HCHD and Ohio EPA inspected the Property and found the following violations:
  - a. ORC § 3734.81(A) for operating a scrap tire storage facility without a license (3,000 scrap tires observed).
  - b. OAC Rule 3745-27-60(B)(6)(f) (currently at OAC Rule 3745-27-60(B)(7)(e)) for failure to provide sufficient fire lanes
  - c. OAC Rule 3745-27-60(B)(8) (currently at OAC Rule 3745-27-60(C)) for failing to control mosquitoes.

The violations were documented in a NOV letter from HCHD to Mr. Shepherd dated February 15, 2006.

16. On January 24, 2007 the HCHD inspected the property and found the following violations:
  - a. ORC § 3734.03 for open dumping.
  - b. OAC Rule 3745-27-05(C) for open dumping.

- c. ORC § 3734.81(A) for establishing a solid waste facility without a license.
- d. OAC Rule 3745-27-60(B)(6)(a) (currently at OAC Rule 3745-27-60(B)(7)(a)) for maintaining scrap tire piles that exceed 2,500 square feet.
- e. OAC Rule 3745-27-60(B)(6)(c) (currently at OAC Rule 3745-27-60(B)(7)(c)) for tire piles (500 or less) not properly separated from buildings and other tire piles.
- f. OAC Rule 3745-27-60(B)(6)(d)(currently at OAC Rule 3745-27-60(B)(7)(d)) for tire piles (more than 500) not properly separated from buildings and structures.
- g. OAC Rule 3745-27-60(B)(6)(f) (currently at OAC Rule 3745-27-60(B)(7)(e)) for failing to provide sufficient fire lanes around piles.
- h. ORC § 3734.76(C) for not obtaining a scrap tire storage registration prior to operations.
- i. OAC Rule 3745-27-61(A)(1) for not obtaining a scrap tire registration prior to operations.

The violations were documented in a NOV letter from HCHD to Mr. Shepherd dated January 29, 2007.

17. On May 16, 2007 the HCHD Board of Health ("BOH") issued an order requiring Mr. Shepherd to do the following:

- a. Establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B)(1)-(6) no later than June 15, 2007; or
- b. Remove all scrap tires by June 30, 2007, and provide HCHD with invoices of incoming and removed tires; and
- c. Provide proof to BOH that Mr. Shepherd is a registered scrap tire transporter (or has applied) no later than June 15, 2007.

18. On July 11, 2007 Ohio EPA and HCHD inspected the property. Ohio EPA found the following violations:

- a. ORC § 3734.03 for open dumping.
- b. OAC Rule 3745-27-05(C) for open dumping.

- c. OAC Rule 3745-27-60(B)(6)(a) (currently at OAC Rule 3745-27-60(B)(7)(a)) for maintaining scrap tire piles that exceed 2,500 square feet.
- d. OAC Rule 3745-27-60(B)(6)(c) (currently at OAC Rule 3745-27-60(B)(7)(c)) for tire piles (500 or less) not properly separated from buildings and other tire piles.
- e. OAC Rule 3745-27-60(B)(6)(d) (currently at OAC Rule 3745-27-60(B)(7)(d)) for tire piles (more than 500) not properly separated from buildings and other tire piles.
- f. OAC Rule 3745-27-60(B)(6)(e) (currently at OAC Rule 3745-27-60(B)(11)) for failure to keep fire lanes free of combustible material.
- g. OAC Rule 3745-27-60(B)(6)(f) (currently at OAC Rule 3745-27-60(B)(7)(e)) for failing to provide sufficient fire lanes around piles.
- h. OAC Rule 3745-27-60(B)(8) (currently at OAC Rule 3745-27-60(C)) for failing to control mosquitoes.
- i. ORC § 3734.02(C) for establishing a solid waste facility without a permit.
- j. ORC § 3734.05(A) for establishing a solid waste facility without a license.
- k. OAC Rule 3745-27-61(B) for not obtaining a scrap tire storage registration prior to operations.
- l. OAC Rule 3745-27-54(A)(1) for transporting scrap tires without obtaining a registration certificate.

The violations were documented in a NOV letter from Ohio EPA to Mr. Shepherd dated July 24, 2007.

From the July 11, 2007 inspection, HCHD found the following violations:

- a. ORC § 3734.03 for open dumping.
- b. OAC Rule 3745-27-05(C) for open dumping.
- c. ORC § 3481(A) for establishing a solid waste facility without a license.
- d. OAC Rule 3745-27-60(B)(6)(c) (currently at OAC Rule 3745-27-60(B)(7)(c)) for tire piles (500 or less) not properly separated from buildings and other tire piles.

- e. ORC § 3734.76 for not obtaining a scrap tire storage registration prior to operations.
- f. OAC Rule 3745-27-61(A)(1) for not obtaining a scrap tire registration prior to operations.

The violations were documented in a NOV letter from HCHD to Mr. Sheperd dated July 27, 2007.

19. On February 21, 2008 Ohio EPA inspected the Property and found the following violations:

- a. ORC § 3734.03 for open dumping.
- b. OAC Rule 3745-27-05(C) for open dumping.
- c. OAC Rule 3745-27-60(B)(6)(a) (currently at OAC Rule 3745-27-60(B)(7)(a)) for maintaining scrap tire piles that exceed 2,500 square feet.
- d. OAC Rule 3745-27-60(B)(6)(c) (currently at OAC Rule 3745-27-60(B)(7)(c)) for tire piles (500 or less) not properly separated from buildings and other tire piles.
- e. OAC Rule 3745-27-60(B)(6)(d) (currently at OAC Rule 3745-27-60(B)(7)(d)) for tire piles (more than 500) not properly separated from buildings and other tire piles.
- f. OAC Rule 3745-27-60(B)(6)(e) (currently at OAC Rule 3745-27-60(B)(11)) for failure to keep fire lanes free of combustible material.
- g. OAC Rule 3745-27-60(B)(6)(f) (currently at OAC Rule 3745-27-60(B)(7)(e)) for failing to provide sufficient fire lanes around piles.
- h. OAC Rule 3745-27-60(B)(8) (currently at OAC Rule 3745-27-60(C)) for failing to control mosquitoes.
- i. ORC § 3734.02(C) for establishing a solid waste facility without a permit.
- j. ORC § 3734.05(A) for establishing a solid waste facility without a license.
- k. OAC Rule 3745-27-61(B) for not obtaining a scrap tire storage registration prior to operations.
- l. OAC Rule 3745-27-54(A)(1) for transporting scrap tires without obtaining a registration certificate.

This inspection was documented in a NOV from Ohio EPA to Respondent dated March 19, 2008.

20. In 2007, The Ohio Department of Health confirmed two human cases of West Nile Virus in Hancock County.
21. Given the documented proximity of the scrap tire pile to Williamstown, the confirmed presence of West Nile Virus in the County, the potential that a tire fire could obscure major transportation routes such as State Route 30, and the adverse impact that a tire fire could have on private sources of ground water and the 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.
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, 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."
23. 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

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(C). Respondent shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3) to Ohio EPA Northwest District Office 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).
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 in exceedance of one thousand (1,000) scrap tires and any other solid waste encountered 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.
4. Respondent shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume or number of scrap tires received. Respondent shall forward such documentation to Ohio EPA Northwest District Office on a monthly basis by the 20th day of each month.
5. Respondent shall submit monthly progress reports until all scrap tires in exceedance of one thousand (1,000) scrap tires are removed from the Property. Respondent's monthly progress reports, due to Ohio EPA Northwest District Office by the 20th day of each month, shall summarize Respondent's efforts to comply with the requirements of these Orders. The first progress report shall be delivered to Ohio EPA Southwest District Office no later than the 20th day of the month immediately following the month that these Orders become effective.
6. Respondent shall comply with Order Nos. One (1) and Two (2) above until such time as all scrap tires in exceedance of one thousand (1,000) scrap tires have been removed from the Property unless otherwise provided by Ohio EPA in writing.

## **VI. TERMINATION**

Respondent's obligation 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 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 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 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 Respondent have acted in good faith to comply with the order.

## X. NOTICE

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

Ohio Environmental Protection Agency  
Northwest District Office  
Division of Solid and Infectious Waste Management  
Attn: Unit Supervisor, DSIWM  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

and to:

Hancock County Health Department  
209 W. Main Cross Street, Suite 101  
Findlay, Ohio 45840

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 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.

## 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