State of Ohio Environmental Protection Agency

STREET ADDRESS:
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MAILING ADDRESS:
P.O. Box 1049
Columbus, OH 43216-1049

December 4, 2008

Linda Nichols
B & K Auto Service
236 South Church St.
Clyde, OH 43410

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
Jeff Hurdley , OEPA, Legal
Ed Merriman, NWDO, DSIWM

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC -4 2008
ENTERED DIRECTOR'S JOURNAL

In the Matter Of	:	
Linda Nichols	:	
B & K Auto Service	:	Director's Final Findings
236 South Church St.	:	and Orders
Clyde, Ohio 43410	:	

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Linda Nichols 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 her 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 current owner of a parcel of land, located at 983 Woodland Avenue, Village of Clyde, Sandusky County, Ohio, identified in the Sandusky County Auditor's Official Records as Parcel ID Number 326000010200 and Legal Description Outlot 102 8.991185AC (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 more than eighty thousand (80,000) scrap tires are estimated to be illegally disposed of on the Property as well as other mixed solid waste.

4. The Property is not licensed as a scrap tire collection facility or a solid waste disposal facility.

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: 12.04.08

5. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).

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. ORC § 3734.01(E) defines "solid wastes" as "such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more that fifty percent of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. Solid waste does not include any material that is an infectious waste or a hazardous waste."

8. The open dumping of scrap tires is a violation of ORC § 3734.03 which states that "[n]o person shall dispose of solid wastes by open burning or open dumping," and OAC Rule 3745-27-05(C) which states that "[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."

9. OAC Rule 3745-27-01(O)(4)(b) defines open dumping as, "[t]he deposition of solid wastes that consist of scrap tires into waters of the state, and also means 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 "[t]he storage of scrap tires in any amount outside or inside a trailer, vehicle, or building is deemed a nuisance, a hazard to public health or safety, or fire hazard unless the scrap tires are stored in accordance with [the standards in OAC Rule 3745-27-60(B)(1) - (11)]."

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 19, 2006 Ohio EPA conducted an inspection of the Property and observed the following violations:

    a) Open dumping of solid wastes in violation of ORC § 3734.03 and OAC Rule 3745-27-05(C);
    b) Failure to obtain a license to operate a scrap tire facility in violation of ORC § 3734.81(A);
    c) Failure to obtain a license to operate a solid waste facility in violation of ORC § 3734.05(A);
    d) Failure to obtain a permit to operate a solid waste facility in violation of ORC § 3734.02(C);
    e) Failure to obtain a registration certificate prior to the establishment of a scrap tire collection, storage, or recovery facility in violation of ORC § 3734.76(C) and OAC Rule 3745-27-61(B);
    f) Failure to store scrap tires storage piles that shall be no greater than two thousand five hundred square feet in basal area in violation of OAC 3745-27-60(B)(6)(a), *rev.'d* OAC 3745-27-60(B)(7)(a), eff.11/01/2007;
    g) Storing scrap tires in piles in excess of 8 feet in height in violation of OAC Rule 3745-27-60(B)(6)(b), *rev.'d* OAC 3745-27-60(B)(7)(b), eff.11/01/2007; and,
    h) Failure to maintain sufficient fire lanes to allow access of emergency vehicles in violation of OAC Rule 3745-27-60(B)(6)(f), *rev.'d* OAC 3745-27-60(B)(7)(e), eff.11/01/2007.

    These violations were documented in an NOV letter from Ohio EPA to Linda Nichols dated August 8, 2006.

13. On September 25, 2007 the Sandusky County Department of Public Health issued Tire Abatement Orders to Linda Nichols as to the property located at 983 Woodland Avenue, Village of Clyde, Sandusky County, Ohio, identified as Parcel Number 326000010200, noting the following violations:

    a) Open dumping of solid waste and thousands of tires at the property located at 983 Woodland Ave., Parcel ID Number 326000010200, in violation of ORC § 3734.03 and OAC Rule 3745-27-05(C);
    b) Failing to obtain a solid waste facility license or permit in violation of ORC § 3734.05(A) and ORC § 3734.02(C);
    c) Failing to maintain fire lanes in violation of OAC Rule 3745-27-60(B)(6)(e) *rev.'d* OAC Rule 3745-27-60(B)(7)(f), eff.11/01/2007; and,
    d) Improperly storing scrap tires.

In those Tire Abatement Orders, the Sandusky County Health Department Ordered Ms. Linda Nichols to:

a) Dispose of solid wastes on the property at a licensed facility within thirty (30) days, and forward receipts to the Health Department within 10 days;
b) Establish proper storage piles and fire lanes in accordance with 3745-27-60(B) within thirty (30) days;
c) Remove 2,500 tires from the property at 983 Woodland Ave, within thirty (30) days, and every thirty (30) days thereafter continue to remove scrap tires until all have been removed, by a registered transporter, to a licensed facility under ORC 3734.81 or to a solid waste facility in another state operating under the laws of that state, and to retain receipts, and submit those receipts within ten (10) days;
d) Submit progress reports to the Sandusky Department of Health, and continue to comply with the Tire Abatement Orders until all scrap tires have been removed from the property.

14. On October 30, 2007 and November 19, 2007, the Sandusky Health Department inspected the property, and issued Notices of Violations to Linda Nichols on November 5, 2007 and on November 27, 2007 (respectively) for open dumping, operating a scrap tire facility without a permit or license, and for improperly storing scrap tires, failing to maintain fire lanes, and failing to submit documentation of mosquito control measures in violation of OAC Rule 3745-27-60(B).

15. On January 18, 2008 the Sandusky Health Department inspected the property, and issued a Notice of Violation to Ms. Nichols on January 28, 2008 for open dumping, operating a scrap tire facility without a permit or license, as well as for improperly storing scrap tires, failing to maintain fire lanes, and failing to submit documentation of mosquito control measures in violation of OAC Rule 3745-27-60(B).

16. On January 18, 2008, Ohio EPA conducted an inspection of the Property and observed the following violations:

a) Open dumping of solid wastes in violation of ORC § 3734.03 and OAC Rule 3745-27-05(C);
b) Failure to obtain a license to operate a scrap tire facility in violation of ORC § 3734.81(A);
c) Failure to obtain a license to operate a solid waste facility in violation of ORC § 3734.05(A);
d) Failure to obtain a permit to operate a solid waste facility in violation of ORC § 3734.02(C);

e) Failure to obtain a registration certificate prior to the establishment of a scrap tire collection, storage, or recovery facility in violation of ORC § 3734.76(C) and OAC Rule 3745-27-61(B);
f) Failure to maintain sufficient drainage such that water does not collect in the area where scrap tires are stored in violation of OAC Rule 3745-27-60(B)(1);
g) Failure to separate scrap tires as follows: scrap tire storage piles of more than five hundred scrap tires including single or multiple racks containing a total of more than five hundred scrap tires shall be separated from other scrap tire storage piles and from buildings and structures by a fire break with a width equal to or greater than fifty-six feet in accordance with the fire break chart in appendix I to rule 3745-27-65 of the Administrative Code in violation of OAC Rule 3745-27-60(B)(7)(d); and,
h) Failure to maintain sufficient fire lanes to allow access of emergency vehicles at all times to and around the scrap tire storage piles and areas in violation of OAC Rule 3745-27-60(B)(7)(f).

This inspection was documented in an NOV letter from Ohio EPA to Linda Nichols dated February 21, 2008.

17. On July 11, 2008, Ohio EPA conducted an inspection of the Property and observed the following violations:

a) Open dumping of solid wastes in violation of ORC § 3734.03 and OAC Rule 3745-27-05(C);
b) Failure to obtain a license to operate a scrap tire facility in violation of ORC § 3734.81(A);
c) Failure to obtain a license to operate a solid waste facility in violation of ORC § 3734.05(A);
d) Failure to obtain a permit to operate a solid waste facility in violation of ORC § 3734.02(C);
e) Failure to obtain a registration certificate prior to the establishment of a scrap tire collection, storage, or recovery facility in violation of ORC § 3734.76(C) and OAC Rule 3745-27-61(B);
f) Failure to maintain sufficient drainage such that water does not collect in the area where scrap tires are stored in violation of OAC Rule 3745-27-60(B)(1);
g) Storing scrap tires in piles in excess of 8 feet in height in violation of OAC Rule 3745-27-60(B)(7)(b);
h) Failure to separate scrap tires as follows: scrap tire storage piles of more than five hundred scrap tires including single or multiple racks containing a total of more than five hundred scrap tires shall be separated from other scrap tire storage piles and from buildings and structures by a fire break with a width equal to or greater than fifty-six feet in accordance with the fire break chart in appendix I to rule 3745-27-65 of the Administrative Code in violation of OAC Rule 3745-27-60(B)(7)(d); and,

i) Failure to maintain sufficient fire lanes to allow access of emergency vehicles at all times to and around the scrap tire storage piles and areas in violation of OAC Rule 3745-27-60(B)(7)(f).

This inspection was documented in an NOV letter from Ohio EPA to Linda Nichols dated July 17, 2008.

18. Given the confirmed presence of mosquitoes and the proximity of the scrap tires located on the Property to sensitive sub-populations, including one nursing home within 1.1 miles, and two schools within less than a mile each of the Property, 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 § 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."

20. ORC § 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. Upon the effective date of these Orders, Respondent shall cease acceptance and disposal of 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, Respondent shall establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B).

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

5. Respondent shall submit monthly progress reports until all scrap tires are removed from the Property. Respondent's monthly progress reports, due to Ohio EPA Northwest District Office by the 10th 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 Northwest District Office no later than the 10th day of the month immediately following the month that these Orders become effective.

6. Respondent 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.

7. 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 Respondent, Respondent shall use her best efforts to secure from such persons access for Respondent and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent 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 Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

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 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 has 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 N. Dunbridge Road
Bowling Green, Ohio 43402

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