OHIO E.P.A.
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DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Dennis Brake	:	Director's Final Findings
687 Greenville Road	:	and Orders
Bristolville, OH 44402	:	

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: 2-18-09

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Dennis Brake ("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 Respondent or of the Property (as hereinafter defined) owned by 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 (Director) has determined the following findings:

1. Respondent is the owner of real property located at 687 Greenville Road, Bristolville, Trumbull County, Ohio and claims title by or through instrument recorded in Volume 576, page 462, of the Trumbull County Recorder's Official Records (the "Property"). The Property is further identified as Trumbull County Auditor parcel number 48-009427.

2. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).

3. There are currently an estimated 5,000 scrap tires illegally disposed on the Property.

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

5. 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."

6. Scrap tires are "solid wastes" within the meaning of ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23). ORC Section 3734.01(E) defines "solid wastes" as "unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations . . . and includes, but is not limited to, . . . scrap tires[.]" OAC Rule 3745-27-01(S)(23) defines "solid waste" as "unwanted residual solid or semisolid material, including but not limited to . . . scrap tires[.]"

7. The open dumping of solid waste, including scrap tires, is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C), which respectively state: "No person shall dispose of solid wastes by . . . open dumping[;]" and "No 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."

8. OAC Rule 3745-27-01(O)(4)(b) defines "open dumping" of scrap tires 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."

9. ORC Sections 3734.85(C)(2), (C)(3), (C)(4), (C)(5), (C)(7), and (C)(10) are not applicable to the Property or to the deposition or placement of scrap tires at the Property.

10. "Disposal" under ORC Section 3734.01(F) means in pertinent part "the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid wastes . . . into or on any land or ground . . . except if the disposition or placement constitutes storage . . . or, if the solid wastes consist of scrap tires, the disposition or placement constitutes a beneficial use [pursuant to ORC Section 3734.01(V) and OAC Rule 3745-27-78.]"

11. 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)]."

12. The placement of scrap tires at the Property was neither in accordance with OAC Rule 3745-27-60 nor a beneficial use of scrap tires pursuant to ORC Sections 3734.01(F) and (V) and OAC Rule 3745-27-78. Therefore, the placement of scrap tires at the Property is "disposal" as defined by ORC Section 3734.01(F), and the storage of scrap tires at the Property is deemed a nuisance, a hazard to public health or safety, or a fire hazard under OAC Rule 3745-27-60(B).

13. In light of the preceding, "open dumping" of scrap tires has occurred at the Property in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) as placement of scrap tires at the Property meets the definition of "open dumping" in OAC Rule 3745-27-01(O)(4)(b). Accordingly, Respondent is required under OAC Rule 3745-27-05(C) to promptly remove and dispose of the scrap tires at the Property.

14. On October 8, 2002, Respondent entered into a Preliminary and Permanent Injunction Consent Order ("Consent Order") that was filed in the Trumbull County Court of Common Pleas (Case No. 2002-CV-1484). In the Consent Order, the Trumbull County Common Pleas Court ("Court") issued a ruling regarding Property. The ruling contained, in part, the following findings:

    a. Respondent failed to comply with an administrative order issued by the Board of Health requiring the removal of scrap tires from the Property;

    b. Solid waste (scrap tires) had been disposed on the Property and that disposal constituted open dumping;

    c. Respondent failed to obtain a license to store scrap tires, and failed to store scrap tires in a manner consistent with OAC Rule 3745-27-60(B);

    d. The Property is a Statutory and common law nuisance, a fire hazard, and an environmental danger to the residents of Trumbull County.

Additionally, in the Consent Order the Court ordered Respondent to cease disposing of scrap tires on the Property, remove not less than five hundred scrap tires every three months, and provide the documentation of the removal to the Trumbull County Health Department.

15. The Trumbull County Health Department conducted a follow-up inspection on May 20, 2003 and noted that some scrap tires had been removed from the Property.

16. On or about May 20, 2003 Respondent submitted documents to the Trumbull County Health Department indicating that from February 12, 2003 through May 12, 2003, one thousand one hundred thirteen (1,113) tires had been removed from the Property.

17. Trumbull Health Department conducted inspections of the Property on September 11, 2003, September 19, 2003, November 6, 2003, February 12, 2004, May 17, 2004, and August 18, 2004, and noted that scrap tires were being removed from the Property. However, Respondent did not submit copies of disposal receipts to the Health Department for verification that five hundred scrap tires were being removed from the Property every three months as required by the October 8, 2002, Consent Order.

18. Ohio EPA and Trumbull County Health Department conducted an inspection of the Property on February 24, 2005. In correspondence dated March 10, 2005, Ohio EPA notified Respondent that he was in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires. Trumbull County Health Department also Notified Respondent of these violations in correspondence dated September 28, 2005.

19. Trumbull County Health Department conducted an inspection of the Property on June 12, 2008. In correspondence dated July 14, 2008, Trumbull County Health Department notified Respondent that he was in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires.

20. Respondent has failed to remove all scrap tires from his Property and approximately five thousand (5,000) scrap tires remain on the Property in violation of ORC Section 3734.03, OAC Rule 3745-27-05(C), and the October 8, 2002 Consent Order.

20. 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.

21. Given the Trumbull County Court of Common Pleas' finding that the Property is a statutory and common law nuisance, a fire hazard, and an environmental danger to the residents of Trumbull County, as well as the potential that a tire fire could obscure transportation on major routes such as State Route 88, and in consideration that the effects of a tire fire could adversely impact waters of the state and the health of the public, 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.

22. 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."

23. ORC Section 3734.85(A) further provides that "[i]f 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 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.

2. 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) and (2). Respondent shall maintain records of each application of the registered pesticide, larvicide, or adulticide and provide copies of the mosquito control records as required by OAC Rule 3745-27-60(C)(3) to Ohio EPA, Northeast District Office or the Trumbull County Health Department upon request.

3. Not later than thirty (30) days after the effective date of these Orders, Respondent shall establish storage piles and fire brakes at the Property in accordance with OAC Rule 3745-27-60(B)(1) through (11).

4. 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 buried scrap tires, and shall arrange for their transportation by a registered scrap tire transporter:

    a. to a scrap tire scrap tire collection, scrap tire storage, scrap tire monocell, scrap tire monofill, or scrap tire recovery facility licensed under ORC Section 3734.81;

    b. to a solid waste incinerator or energy recovery facility subject to regulation under ORC Chapter 3734;

    c. to a premises authorized to beneficially use scrap tires pursuant to OAC Rule 3745-27-78; and/or

    d. to a facility in another state in compliance with the laws of that state.

5. Respondent shall obtain receipts from the registered transporter and the facility, indicating weight, volume, or number of scrap tires received. Respondent shall forward such documentation to Ohio EPA, Northeast District Office within ten (10) days after completion of Order No. Four (4).

6. Respondent shall continue to comply with Order Nos. Two (2) and Three (3) 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 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 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 Respondent 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 East Aurora Road
Twinsburg, Ohio 44087

and to:

Trumbull Health Department
Attn: Health Commissioner
176 Chestnut Avenue, NE
Warren, OH 44483

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 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.

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