

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO EPA  
3011 2001  
GENERAL COUNCIL'S JOURNAL

In the matter of:

Mr. Harold Dowden : Director's Final Findings  
7562 Church Road : and Orders  
'West Liberty, OH 43357

**PREAMBLE**

It is hereby agreed that:

**I. JURISDICTION**

These Director's Final Findings and Order ("Orders") are issued to Mr. Harold Dowden ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("RC") sections 3704.03, 3734.13 and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and his heirs and successors in interest liable under Ohio law. No change in ownership relating to the farm identified in Finding 1 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 used in RC Chapters 3704, and 3734 and the regulations promulgated thereunder.

**IV. FINDINGS OF FACT**

1. Respondent farms property located at 7562 Church Road, West Liberty, Ohio.
2. On October 12, 1999, the Champaign County Health Department (CCHD) received a complaint regarding open dumping of scrap tires on the Respondent's property. CCHD documented that tires had been dumped in a field west of property located at 4690 Nine Mile Road. CCHD also indicated that there were two large piles of brush and roofing materials at that location.
3. On October 18, 1999, the CCHD issued a Notice of Violation (NOV) letter to Respondent citing a violation of RC 3734.03 for open dumping of solid wastes, which include but are not limited to scrap tires. The NOV also cited a violation of

I certify this to be a true and accurate copy of the  
official court record as filed in the records of the Ohio  
Environmental Protection Agency.

By Zona L. Clement Date 12-11-01

OAC rule 3745-400-04(D) for illegal disposal of construction and demolition debris.

4. On October 20, 1999, representatives of CCHD and Ohio EPA's Southwest District Office (SWDO) met with Respondent and inquired as to his plans regarding the scrap tires and piles of brush. Respondent indicated that it was his intention to burn the brush piles, roof shingles and tires. The SWDO and CCHD informed Respondent that it was illegal to burn scrap tires and roofing shingles.

5. On November 1, 1999, Ohio EPA's SWDO issued a warning letter to Respondent regarding his verbal statements given on October 20, 1999 regarding his intention to burn the brush piles, shingles and tires being stored on the property.

6. On December 13, 1999, representatives of the CCHD and the SWDO inspected Respondent's field west of Nine Mile Road and saw that the scrap tires and roof shingles that had been piled next to the brush piles were gone. Respondent stated that the people who dropped off the tires to be burned had returned and removed them. On December 15, 1999, Respondent gave the CCHD a copy of a letter stating that he had taken 100 scrap tires to the Firestone Store in West Liberty.

7. On January 7, 2000, the CCHD sent a letter to Respondent indicating that a follow-up inspection conducted on December 13, 1999, confirmed that most of the pile was now free of solid waste and construction and demolition debris.

8. Upon application by Respondent, on January 24, 2000, Ohio EPA's SWDO issued an open burning permit to Respondent for the brush pile in the field west of Nine Mile Road.

9. On March 9, 2000, the local fire department received a report that a barn was on fire in the vicinity of Respondent's farm. The fire department responded and did not find a barn fire, but did discover open burning on property located at 7562 Church Road, which was farmed by Respondent materials burned included scrap tires and brush. The fire department determined that the fire had been intentionally set. The intentional open burning of scrap tires constitutes a violation of RC 3734.03 and OAC rules 3745-19-04 and 3745-27-05(B).

10. The brush at the sites referenced in Paragraphs 2 and 9, above, was "agricultural waste" as that term is defined in OAC rule 3745-19-01 (A). The sites in question were located in an "unrestricted area" as that term is defined in OAC rule 3745-19-01 (J).

11. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their benefits to the people of the State to

be derived from such compliance.

## **V. ORDERS**

1. Respondent shall immediately cease acceptance, disposal and burning of all solid wastes at the Property.
2. Pursuant to RC 3704.06 and RC 3734.28, Respondent is assessed a civil penalty in the amount of Two Thousand Seven Hundred Dollars (\$2,700) in settlement of Ohio EPA's claim for civil penalties. On or before December 31, 2001, Respondent shall deliver the civil penalty to Ohio EPA. Respondent shall pay Two Thousand One Hundred Sixty Dollars (\$2,160) to be deposited in the hazardous waste cleanup fund, pursuant to RC 3734.28. The remaining Five Hundred Forty Dollars (\$540) of the penalty shall be divided between the Environmental Education Fund and the Division of Air Pollution Control, pursuant to RC 3745.22. Payment shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to Vicki Galilei, Fiscal Specialist, or her successor, at the following address:

Fiscal Administration  
Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. Box 1049  
122 S. Front Street  
Columbus, OH 43216-1049

A copy of the check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

Jim Orlemann, Manager  
Engineering Section  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. Box 1049  
122 S. Front Street  
Columbus, OH 43216-1049

## **VI. 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.

## VII. RESERVATION OF RIGHTS

Nothing contained herein prevents the 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 the seeking penalties against Respondent for noncompliance with these Orders. Nothing contained herein prevents the Ohio EPA from exercising its lawful authority to require Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions that: the Ohio EPA may seek to require of Respondent.

## VIII. MODIFICATIONS

These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

## IX. SIGNATORIES

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these orders and to legally bind such party to this document.

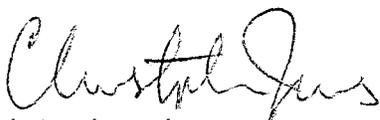
## X. WAIVER

In order to resolve disputed claims, without admissions of fact, violation or liability, Respondent agrees to comply with these Orders. Compliance with these orders shall be a full accord and satisfaction for Respondent's liability for the specific violations cited herein. Respondent hereby waives the right to appeal the issuance, terms and service of these Orders and it hereby waives any and all rights it may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceeding, the Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such an appeal. In such event, Respondent shall continue to comply with these Orders unless said Orders are stayed, vacated, or modified.

### IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Christopher Jones  
Director

12-7-01

Date

**IT IS SO AGREED:**

*Harold Dowden*

*11/12/01*

Harold Dowden  
7562 Church Road  
West Liberty, OH 43357

Date