

Date Issued: SEP 14 2001

Date Effective: SEP 14 2001

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Arthur B. Copas
Elnor D. Copas
Darla G. Copas

Director's Final Findings
and Orders

d.b.a.

Shupert Tire Service :
136 Lick Run Road :
West Union Ohio 45693 :

OHIO E.P.A.
SEP 14 2001
ENTERED DIRECTOR'S JOURNAL

Respondents

PREAMBLE

It is hereby agreed by and among the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to the Respondents pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under sections 3734.13 and 3745.01 of the Ohio Revised Code ("ORC").

II. PARTIES

These Orders shall apply to and be binding upon the Respondents, and their assigns, heirs and successors in interest. No changes in ownership relating to the Property, as hereinafter defined, will in any way alter the Respondents' responsibilities under these Orders. The Respondents' obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

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

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734 and the regulations promulgated thereunder.

IV. FINDINGS OF FACT

The Director has determined the following findings of fact:

1. Respondents Arthur B. Copas, Elnor D. Copas and Darla G. Copas are doing business as "Shupert Tire Service" which is situated on 2.216 acres of real property 'located at 136 Lick Run Road, West Union, Adams County, Ohio ("Property").
2. The Property is jointly owned by Elnor Darlene Copas and Darla G. Copas.
3. Respondents Arthur B. Copas, Elnor D. Copas and Darla G. Copas are each "persons" as that term is defined in ORC Section 3734.01(G) and OAC Rule 3745-27-01 (B) and are each responsible for the accumulation of scrap tires on the Property.
- 4 . Scrap tires are "solid wastes" as that term is (defined in OAC Rule 3745-27-01.
5. The Property contains an estimated 50,000 to 80,000 scrap tires. The Property is an unpermitted and unlicensed "solid waste disposal facility," as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-27-01.
6. On June 2, 1998, Ohio EPA collected mosquito samples at the Property. After each sampling event, *Aedes triseriatus* (tree hole mosquito) was confirmed to exist at the Property. This mosquito is capable. of transmitting encephalitis.
7. ORC 3734.03 states, "No person shall dispose of solid wastes by . . . open dumping."
8. OAC Rule 3745-27-05(C) states, "No person shall conduct, permit, or allow open d u m p i n g . "
9. By letters dated June 8, 1998, May 4, 2000, and December 7, 2000, Ohio EPA cited Respondents for open dumping of scrap tires at the Property, in violation of ORC 3734.03 and OAC Rule 3745-27-05(C).

10. OAC Rule 3745-27-60(B)(6)(a) states, "Individual scrap tire storage piles shall be no greater than two thousand five hundred feet in basal area."

OAC Rule 3745-27-60(B)(6)(b) states, "Scrap tire storage piles shall not exceed fourteen feet in height."

OAC Rule 3745-27-60(B)(6)(c) states, "The scrap tire storage piles shall be separated from other scrap tire storage piles by a fire lane with a width equal to or greater than fifty feet."

11. By letters dated May 4, 2000 and December 7, 2000, Ohio EPA cited Respondents for having scrap tire piles larger than 2,500 square feet in basal area, in violation of OAC Rule 3745-27-60(B)(6)(a); for having scrap tire piles taller than fourteen feet high, in violation of OAC Rule 3745-27-60(B)(6)(b); and for not having scrap tire piles separated from other scrap tire piles by a fifty foot fire lane, in violation of OAC Rule 3745-27-60(B)(6)(c).
12. On June 26 and 27, 2001 ;a representative of Ohio EPA conducted an inspection of the Property and determined that Respondents had established fifty foot fire lanes between the scrap tire piles and had reduced the size of the individual piles to no more than fourteen feet in height and 2,500 feet in basal area in full compliance with OAC Rule. 3745-27-60(B)(6), thereby remedying the violations referenced in Findings numbered 10 and 11, above.
13. OAC Rule 3745-27-60(B)(8)(b) states in pertinent part, "Records shall be kept at the facility indicating the name, type, amount used per tire, and EPA registration number of the pesticide or larvicide, the date and time of the application, and the name of the person who applied the pesticide or larvicide."
14. By letter dated May 4, 2000, Ohio EPA cited Respondents for failure to provide information and receipts regarding the spraying of the Property, in violation of OAC Rule 3745-27-60(B)(8)(b).
15. By letter dated May 16, 2000, Respondents submitted receipts and described their previous mosquito spraying activities occurring at the Property.

ORDERS

The Respondents shall achieve compliance with ORC Chapter 3734 and the regulations promulgated thereunder according to the following compliance schedule:

1. Upon the effective date of these Orders, the Respondents shall cease acceptance of scrap tires at the Property unless and until Respondents receive authorization from the Director that they may resume accepting scrap tires.
2. Within thirty (30) days after the effective date of these Orders, the Respondents shall submit to Ohio EPA-SEDO for approval a mosquito control plan that describes in detail how mosquitos will be controlled at the Property. If Ohio EPA-SEDO determines that the Respondents' mosquito control plan is deficient, Ohio EPA-SEDO shall revise and return the plan to the Respondents. Within fourteen (14) days after Ohio EPA returns the plan to the Respondents, the Respondents shall comply with that revised mosquito control plan. If, after a plan is implemented, and Ohio EPA-SEDO determines that mosquitos are not being controlled at the Property, Ohio EPA-SEDO shall notify the Respondents and the Respondents shall revise and resubmit the plan for Ohio EPA-SEDO's approval.
3. Unless otherwise authorized by the director, the Respondents shall remove or cause the removal of at least eight thousand (8,000) scrap tires from the Property during the one year period immediately after the effective date of these Orders and during each year thereafter. The Respondents shall arrange for the transportation of the scrap tires by a registered transporter to an authorized scrap tire facility. The Respondents shall obtain receipts from the registered transporter and the authorized scrap tire facility indicating weight, volume or number of scrap tires transported and shall forward such documentation to Ohio EPA within seven (7) days.
4. Within eight (8) years after the effective date of these Orders, the Respondents shall remove or cause the removal of all scrap tires from the Property.

VI. TERMINATION AND SATISFACTION

The Respondents' obligations under these Orders shall terminate when the Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA, Division of Solid and Infectious Waste Management, that all obligations under these Orders have been performed and Ohio EPA, Division of Solid and Infectious Waste Management, acknowledges, in writing, Ohio EPA's acceptance of this certification and demonstration.

This certification shall be submitted by the Respondents and shall be signed by the Respondents. The certification shall make the following attestation: "We certify that the information contained in or accompanying this certification is true, accurate and complete."

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 signatory to these Orders, for any liability arising out of or relating to the operation of Respondents.

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 federal, state, and local laws and regulations, Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Respondents. Ohio EPA reserves all rights and privileges except as specified herein.

IX. NOTICE

All documents demonstrating compliance with these Orders and all other documents required under these Orders to be submitted to Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Solid and Infectious Waste Management
Attn: Supervisor, DSIWM
2195 Front Street
Logan, Ohio 43138

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 penalties against the Respondents for noncompliance with these Orders or for violations identified in these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Respondents to perform additional activities pursuant to ORC

Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of the Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the Respondents. 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. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only those violations addressed in these Orders, the Respondents agree that these Orders are lawful and reasonable, that the items and time frames provided for compliance herein are reasonable and that the Respondents agree to comply with these Orders. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights section of these Orders.

The Respondents hereby waive the right to appeal the issuance, terms and service of these Orders, and the Respondents hereby waive any and all rights they may have to seek administrative or judicial review of these Orders either in law or equity.

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

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XII. SIGNATORIES

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

IT IS SO AGREED:



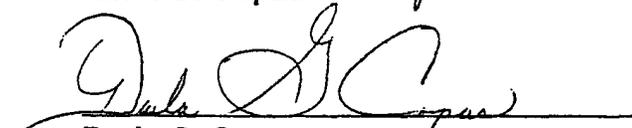
Arthur B. Copas

8-30-01
Date



Elnor D. Copas

8-30-2001
Date



Darla G. Copas

8/30/01
Date

Ohio Environmental Protection Agency



Christopher Jones, Director