

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
APR 19 2013

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

Lois S. Gilboy : Director's Final Findings and  
P.O. Box 24267 : Orders  
Dayton, OH 45424 :

Respondent

**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.**

PREAMBLE

It is agreed by the parties hereto as follows:

By:  Date: 4-19-13

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Lois Gilboy ("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, 3734.85 and 3745.01.

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 makes the following findings:

1. Respondent is the current owner of a 20.5 acre tract of land that was identified in the records of the Montgomery County Recorder's Office as Parcel numbers J44204115 0004 and J44204115 0005. The parcels are situated along Soldiers Home Road, West Carrollton, Dayton, Ohio ("Property").

2. There are currently an estimated 80,000 scrap tires, along with comingled solid wastes, disposed of on the Property in violation of Ohio's Solid Waste laws.
3. Respondent is a person as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).
4. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24).
5. The open dumping of scrap tires is a violation of 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."
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 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) - (10). The scrap tires on Respondent's Property are not stored in accordance with the requirements of OAC Rule 3745-27-60(B).
8. OAC Rule 3745-27-79(B) states that a responsible individual shall characterize and, if necessary, remediate areas of contamination resulting from the open burning of scrap tires in accordance with OAC Rule 3745-27-79.
9. Public Health - Dayton and Montgomery County ("PHDMC") and/or Ohio EPA conducted inspections of the Property on June 22, 2012, October 25, 2012 and December 19, 2012.
10. Photographs taken by Ohio EPA during the October 25, 2012 inspection revealed that open burning of scrap tires occurred at the Property.

11. Respondent failed to characterize and remediate areas of contamination resulting from the open burning of scrap tires, in violation of OAC Rule 3745-27-79(B).
12. In correspondence dated November 2, 2012, PHDMC cited Respondent for open dumping scrap tires on the Property, in violation of ORC Section 3734.03, OAC Rule 3745-27-05, and OAC Rule 3745-27-60(B). Additionally various types of solid waste (drums) have been disposed at the Property in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C), and PHDMC cited violations of ORC 3734.02(C) and 3745.05(A) for operating a landfill without a permit or license.
13. On February 1, 2013, PHDMC issued an Order requiring Respondent to remove and properly dispose of the scrap tires from the Property.
14. On March 27, 2013, PHDMC and Ohio EPA conducted an inspection of the Property.
15. To date conditions at the Property remain unchanged and Respondent remains in violation of Ohio's solid waste laws and PHDMC's Order for failing to properly remove and dispose of the scrap tires from the Property
16. Starting in April 2013, the United States Environmental Protection Agency may conduct an investigation and potential remediation of hazardous substances from the Property.
17. 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.
18. Given the possibility for mosquito species carrying West Nile Virus at 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 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, he 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.”

## V. ORDERS

The Respondent shall achieve compliance with ORC Chapter 3734. and the rules promulgated thereunder according to the following compliance schedule:

1. By entry into these Orders, Respondent agrees to grant access to Ohio EPA and its representatives and contractors to the Property prior to the 120 days, specified in ORC Section 3734.85, for the purpose of:
  - removing and disposing all scrap tires and associated solid waste from the Property, and
  - potentially remediating conditions on the Property and other impacted areas in accordance with the requirements of OAC Rule 3745-27-79 as a result of the burning of scrap tires on the Property.

Respondent shall provide the Director, his representatives and contractors with access to the Property for this purpose and hereby agrees to hold the Director and his representatives and contractors harmless for all activities associated with this purpose. This hold harmless agreement shall not be construed as an agreement that requires Respondent to indemnify the Director and his representatives and contractors.

2. Not later than thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$10,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734., as well as for partial reimbursement of scrap tire cleanup costs.

Respondent shall remit two (2) payments pursuant to the following:

- The civil penalty payment shall be made by official check made payable to “Treasurer, State of Ohio” for \$2,500.00 which will be deposited into the environmental protection remediation fund pursuant to ORC Section 3734.281.
- A second payment shall be made by official check made payable to “Treasurer, State of Ohio” for \$7,500.00 which will be deposited into the scrap tire management fund pursuant to ORC Section 3734.85. This amount will be used to offset the total amount expended by Ohio EPA in its scrap tire abatement process.

Both official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Property. Copies of the two checks shall be sent to Ohio EPA, Division of Materials and Waste Management, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that the Respondent has performed all of the Respondent's obligations under these Orders and the Chief of Ohio EPA's Division of Materials and Waste Management 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: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted to Ohio EPA by the Respondent seeking termination in accordance with this section and shall be signed by that 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, the Property.

#### **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken by Respondent pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local 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.

#### **X. NOTICE**

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

Ohio Environmental Protection Agency  
Southwest District Office  
Division of Materials and Waste Management  
401 East Fifth Street  
Dayton, OH 45402  
Attn: Unit Supervisor, DMWM – Solid Waste

And to:

Public Health - Dayton and Montgomery County  
117 S Main Street  
Dayton, OH 45402  
Attn: Health Commissioner

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders. Ohio EPA specifically reserves all rights to recover the public funds expended to address conditions related to the Property by placing a lien on the Property in accordance with ORC Section 3734.85.

#### **XII. 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 the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for civil penalties under ORC 3734.13 and cost recovery under ORC Section 3734.85 for the violations specifically cited herein except that Ohio EPA reserves all rights to recover the public funds expended to address

conditions related to the Property by placing a lien on the Property in accordance with ORC Section 3734.85.

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

Notwithstanding the preceding, 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 appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

### XIII. EFFECTIVE DATE

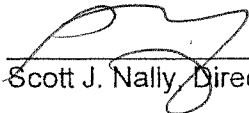
The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

### XIV. SIGNATORY AUTHORITY

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

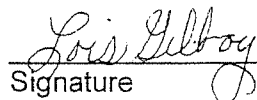
#### **ORDERED AND AGREED:**

Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Scott J. Nally, Director

#### **AGREED:**

Lois Gilboy

  
\_\_\_\_\_  
Signature

4-17-2013  
Date

Lois Gilboy  
\_\_\_\_\_  
Printed or Typed Name