



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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50 W. Town St., Suite 700
Columbus, Ohio 43215

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MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

July 1, 2008

David Delabar
1189 Comanche Circle
Lincolnton, GA 30817

Re: Unilateral 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
Systems Management Unit
Division of Solid & Infectious Waste Management

Enclosure: Director's Final Findings and Orders

cc: Ed Gortner, CO, DSIWM
Rich Fox, DSIWM, SEDO
Jeff Hurdley, DSIWM, Legal

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director



OHIO E.P.A.

JUL -1 2008

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

David Delabar
1189 Comanche Circle
Lincolnton, GA 30817

:
:
:

Director's Final Findings
and Orders

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

I. JURISDICTION

By: Don J. Lassek Date: 07-01-08

These Director's Final Findings and Orders ("Orders") are issued to David Delabar (the "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

These Orders shall apply to and be binding upon Respondent and 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 owner of a parcel of land located at 379 Simpson Road, McDermott, Scioto County, Ohio. That parcel is identified in the Scioto County Recorder's Official Records, Volume 1002, Page 428 and identified as Scioto County Auditor parcel number 21-1793 (the "Property").
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 2,500 scrap tires located on the Property. The scrap tires were deposited or placed at the Property approximately sometime prior to 1993.
4. ORC Section 3734.01(E) defines "solid wastes" in pertinent part 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" (emphasis added).

OAC Rule 3745-27-01(S)(24) also defines "solid waste" as "unwanted residual solid or semisolid material, including but not limited to ... scrap tires"

5. OAC Rule 3745-27-01(S)(6) defines a "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." (emphasis added).
6. Scrap tires are therefore "solid wastes" within the meanings in ORC Section 3734.01(E) and OAC Rules 3745-27-01(S)(24) and (S)(6).
7. "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 solid wastes consist of scrap tires, the disposition or placement constitutes a beneficial use or occurs at a scrap tire recovery facility licensed under section 3734.81 of the Revised Code." (emphasis added).

The exclusion from "disposal" within ORC Section 3734.01(F) for beneficial use of scrap tires was added in 1993.

8. Therefore, the deposition or placement of scrap tires on the ground or land is "disposal" unless the deposition or placement occurs at a scrap tire recovery facility licensed under ORC Section 3734.81 or the deposition or placement of scrap tires constitutes a beneficial use.
9. The Property is not nor ever was a licensed scrap tire recovery facility pursuant to ORC Section 3734.81.
10. "Beneficially use" under ORC Section 3734.01(V) means "to use a scrap tire in a manner that results in a commodity for sale or exchange or in any other manner authorized as a beneficial use in rules adopted by the director in accordance with Chapter 119. of the Revised Code." (emphasis added).

OAC Rule 3745-27-01(B)(1) also defines "beneficial use" in pertinent part as "to use a scrap tire in a manner that results in a commodity for sale or exchange or

in any other manner authorized as a beneficial use in accordance with rule 3745-27-78 of the Administrative Code.”

Therefore, beneficial use of a scrap tire is use in a manner that results in a commodity for sale/exchange or used in a manner authorized as a beneficial use in rules adopted by the Director of the Ohio EPA.

11. Under OAC Rule 3745-27-78(B)(1), (2), no person shall beneficially use scrap tires at a premises unless authorized under (D) or (E) of the rule and that person has provided notification to Ohio EPA, or, for beneficial uses not specifically authorized in (D) or (E), that person requests and receives an authorization from the Director of Ohio EPA in accordance with (F) of the rule prior to the beneficial use of scrap tires.

OAC Rule 3745-27-78 was promulgated by the Director of Ohio EPA in 1996.

12. The deposition or placement of scrap tires at the Property occurred approximately before beneficial use of scrap tires was allowed under both ORC Sections 3734.01(F) and (V) and OAC Rules 3745-27-01 and 3745-27-78.

Therefore, at the time of deposition or placement, the use of scrap tires at the Property was not a “beneficial use.”

13. Under OAC Rule 3745-27-78(D) and (E), there are uses of scrap tires listed that are authorized by the rule. Erosion control is not listed nor ever was listed as an authorized use under (D) or (E) of OAC Rule 3745-27-78.
14. Furthermore, there are no uses listed in OAC Rules 3745-27-78(D) and (E) that are applicable to the deposition or placement of scrap tires at the Property.
15. Therefore, Respondent is and was not authorized by rule to use the scrap tires at the Property, including use as erosion control. Moreover, none of the previous owners of the Property were authorized by rule to use the scrap tires at the Property, including use as erosion control.
16. Respondent did not request nor did he receive authorization from the Director of Ohio EPA to use the scrap tires at the Property pursuant to OAC Rule 3745-27-78(F). Moreover, none of the previous owners of the Property requested and received authorization from the Director of Ohio EPA to use the scrap tires at the Property pursuant to OAC Rule 3745-27-78(F).
17. Taking Findings 15 and 16 into account, Respondent is not, nor ever was, “beneficially using” scrap tires pursuant to OAC Rule 3745-27-78. Furthermore, no former owner of the Property was “beneficially using” scrap tires at the Property pursuant to OAC Rule 3745-27-78.

Therefore, the deposition or placement of scrap tires at the Property is "disposal" under ORC Section 3734.01(F).

18. ORC Section 3734.03 and OAC Rule 3745-27-05(C) prohibit the open dumping of solid wastes. In particular, ORC Section 3734.03 states that "[n]o person shall dispose of solid wastes by ... open dumping, except as authorized by the director of environmental protection in rules adopted in accordance with division (V) of section 3734.01 [(the beneficial use of scrap tires rules)]...."

OAC Rule 3745-27-05(C) states: "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." (emphasis added).

19. 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."
20. Therefore, final deposition of scrap tires on the ground at any place other than facilities licensed under ORC 3734.81; exempted under ORC Sections 3734.85(C)(2), (C)(3), (C)(4), (C)(5), or (C)(7); pursuant to ORC 3734.85(C)(10) and the rules for beneficial use of scrap tires within OAC Rule 3745-27-78; or at a licensed solid waste facility is "open dumping" pursuant to ORC Section 3734.03 and OAC Rules 3745-27-05(C).
21. As with Finding 9, ORC Sections 3734.85(C)(2), (C)(3), (C)(4), (C)(5), (C)(7), (C)(10) are not applicable to the Property or applicable to the deposition or placement of scrap tires at the Property nor is the Property a licensed solid waste facility.
22. Therefore, "open dumping" of scrap tires has occurred at the Property, and Respondent as current owner is required under OAC Rule 3745-27-05(C) to promptly remove and dispose of the scrap tires at the Property.
23. OAC Rule 3745-27-60(B) provides that "[t]he 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 fire hazard unless the tires are stored in accordance with [the standards set forth within this rule (B)(1) through (11)]."

24. 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.
25. On June 29, 2005, Ohio EPA inspected the Property and observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - b. ORC 3745-27-60(B) for storage of scrap tires not in accordance with OAC Rule 3745-27-60(B)(1)-(10).
 - c. OAC Rule 3745-27-60(B)(6)(d) for failure to separate scrap tire piles with fire lanes.
 - d. OAC Rule 3745-27-60(B)(6)(e) for failure to keep fire lanes free of combustible material.
 - e. OAC Rule 3745-27-60(B)(6)(f) for failure to maintain emergency vehicle access.
 - f. OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control.

This inspection was documented in a Notice of Violation letter ("NOV") from Ohio EPA to Respondent dated July 5, 2005.

26. Mosquito trapping was conducted at the Property on July 21, 2005. The Ohio Department of Health, Zoonotic Disease Program identified mosquitoes in the scrap tires and identified species that are known carriers of the West Nile Virus.
27. On September 7, 2005 Ohio EPA inspected the Property and observed the following repeating violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - b. ORC 3745-27-60(B) for storage of scrap tires not in accordance with OAC Rule 3745-27-60(B)(1)-(10).
 - c. OAC Rule 3745-27-60(B)(6)(d) for failure to separate scrap tire piles with fire lanes.
 - d. OAC Rule 3745-27-60(B)(6)(e) for failure to keep fire lanes free of combustible material.
 - e. OAC Rule 3745-27-60(B)(6)(f) for failure to maintain emergency vehicle access.
 - f. OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control.

This inspection was documented in an NOV from Ohio EPA to Respondent dated September 15, 2005.

28. On February 14, 2006 Ohio EPA inspected the Property and observed the following repeating violations:

- a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste.
- b. ORC 3745-27-60(B) for storage of scrap tires not in accordance with OAC Rule 3745-27-60(B)(1)-(10).
- c. OAC Rule 3745-27-60(B)(6)(d) for failure to separate scrap tire piles with fire lanes.
- d. OAC Rule 3745-27-60(B)(6)(e) for failure to keep fire lanes free of combustible material.
- e. OAC Rule 3745-27-60(B)(6)(f) for failure to maintain emergency vehicle access.
- f. OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control.

This inspection was documented in an NOV from Ohio EPA to Respondent dated February 21, 2006.

29. On April 25, 2006 Ohio EPA inspected the Property and observed the following repeating violations:
- a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - b. ORC 3745-27-60(B) for storage of scrap tires not in accordance with OAC Rule 3745-27-60(B)(1)-(10).
 - c. OAC Rule 3745-27-60(B)(6)(d) for failure to separate scrap tire piles with fire lanes.
 - d. OAC Rule 3745-27-60(B)(6)(e) for failure to keep fire lanes free of combustible material.
 - e. OAC Rule 3745-27-60(B)(6)(f) for failure to maintain emergency vehicle access.
 - f. OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control.

This inspection was documented in an NOV from Ohio EPA to Respondent dated April 27, 2006.

30. By letter dated June 26, 2006, the Scioto County Board of Health informed Respondent that the Board condemned the Property as unfit for human habitation.

31. On December 27, 2007 Ohio EPA inspected the Property and observed the following repeating violations:
- a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - b. ORC 3745-27-60(B) for storage of scrap tires not in accordance with OAC Rule 3745-27-60(B)(1)-(10).
 - c. OAC Rule 3745-27-60(B)(6)(d) for failure to separate scrap tire piles with fire lanes.
 - d. OAC Rule 3745-27-60(B)(6)(e) for failure to keep fire lanes free of combustible material.

- e. OAC Rule 3745-27-60(B)(6)(f) for failure to maintain emergency vehicle access.
- f. OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control.¹

This inspection was documented in an NOV from Ohio EPA to Respondent dated January 7, 2008.

32. Given the documented presence of mosquitoes capable of transmitting West Nile Virus, the proximity of the scrap tire pile to Scioto Brush Creek,² and the potential that a scrap tire fire could occur and the adverse impact that a scrap tire fire could have on Scioto Brush Creek and other waters of the state, 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.
33. 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, 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.” (emphasis added).
34. ORC Section 3734.85 further provides “[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.”

¹ The December 27, 2007 violations were mis-cited within the NOV to the old OAC scrap tire rules. The violations for subpart b. through f. should be for OAC Rule 3745-27-60 (B)(1)-(11), (B)(7)(d), (B)(11), (B)(7)(e), and (C), respectively.

² Scioto Brush Creek is designated by Ohio EPA as an Exceptional Warmwater Habitat.

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, particularly OAC Rule 3745-27-60 as effective November 1, 2007.
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). Respondent shall make the mosquito control records required by OAC Rule 3745-27-60(C)(3) available for inspection by Ohio EPA or the Scioto County Board of Health during normal operating hours. Respondent shall retain copies of mosquito control records for a minimum period of three years.
3. Not later than thirty (30) days after the effective date of these Orders, Respondent shall establish storage piles and fire breaks 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 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 transporter, to a scrap tire storage, monocell, monofill, or recovery facility licensed under ORC Section 3734.81, 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. 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 Southeast 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 Southeast 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 Southeast 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) through Five (5)** above until such time as all scrap tires have been removed from the Property unless otherwise provided by Ohio EPA in writing.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrate 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 these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit 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.

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:

A handwritten signature in black ink, appearing to read "Chris Korleski", is written over a horizontal line.

Chris Korleski, Director