



State of Ohio Environmental Protection Agency

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Columbus, OH 43216-1049

July 7, 2008

Larry Smith
563 Allen Road, #35
Milan, Michigan 48160

CERTIFIED MAIL

Director's Final Findings & Orders

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

Sincerely,

Kimberly Reese
Systems Management Unit
Division of Solid & Infectious Waste Management

cc: Ed Gortner, CO, DSIWM
Jeff Hurdley, CO, Legal
Ed Merriman, NWDO, DSIWM

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

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JUL -7 2008

REGISTERED DIRECTOR'S JOURNAL

In the Matter Of:

Larry Smith
563 Allen Road, #35
Milan, Michigan 48160

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Director's Final Findings
and Orders

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: Ang. Lassiter Date: 7-7-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Larry Smith ("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 3745.01.

II. PARTIES

These Orders shall apply to and be binding upon Respondent and his heirs and successors in interest liable under Ohio law.

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 was a registered scrap tire transporter from 1998 to May 1, 2001.
2. Respondent is a "person" as that term is defined in ORC Section 3734.01(G), and in Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
3. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rules 3745-27-01(S)(6) and (S)(23).

4. ORC Section 3734.83(A) provides that "no person shall transport scrap tires anywhere in this state [of Ohio] unless the business or governmental entity that employs the person first registers with and obtains a registration certificate from the director of environmental protection."
5. OAC Rule 3745-27-54(A) (effective March 22, 2002) provides "no person shall transport scrap tires in the state of Ohio, without first obtaining an annual registration certificate."
6. OAC Rule 3745-27-54(B) provides "[a]n application for an annual registration certificate as required by section 3734.83 of the Revised Code, shall be submitted to and approved by the director, before the transportation of scrap tires is begun."
7. On September 4, 2001, Ohio EPA's Scrap Tire Unit sent a warning letter to Respondent to cease illegal transportation of scrap tires after it was brought to the attention of Ohio EPA that Respondent was transporting scrap tires after his registration expired.
8. On May 4, 2004, the Toledo-Lucas County Health Department ("Health Department") conducted a routine scrap tire generator inspection of Capital Tire, located in Toledo, Ohio. During this inspection, the Health Department discovered the Respondent was in violation of OAC Rule 3745-27-54(A)(1)(a) (effective March 22, 2002) for transporting scrap tires without first obtaining an annual registration certificate.

The finding from this inspection was documented in a Notice of Violation letter ("NOV") from the Health Department to Respondent dated May 10, 2004.

9. On September 26, 2006, Ohio EPA conducted a routine scrap tire generator inspection at FanMark, Inc. located in Port Clinton, Ohio. During this inspection, Ohio EPA discovered the Respondent was in violation of the following:
 - a. ORC Section 3737.83(A) for transporting scrap tires in Ohio without first registering and obtaining a registration certificate.
 - b. OAC Rule 3745-27-54(A) (effective March 22, 2002) for transporting scrap tires in Ohio without first obtaining an annual registration certificate.
 - c. OAC Rule 3745-27-54(B) for failing to submit an annual registration certificate prior to transporting scrap tires.

The findings from this inspection were documented in an NOV from Ohio EPA to Respondent dated October 6, 2006.

10. On September 27, 2006, Ohio EPA's Office of Special Investigations ("OSI") contacted Joe Fantozzi, owner of FanMark, Inc., via telephone. Mr. Fantozzi stated that Respondent was picking up scrap tires at his business. OSI informed Mr. Fantozzi that he would have to use a registered scrap tire transporter in the future.

11. On January 25, 2007, Respondent was interviewed by OSI and the Ohio Attorney General's Office, Bureau of Criminal Identification and Investigation ("BCI"). This interview was conducted at McDonald's Restaurant located at the intersection of U.S. Route 223 and U.S. Route 23, outside of Blissfield, Michigan. Respondent told investigators he was willing to cooperate and would take part in the interview. In this interview, Respondent provided the following details:
 - Respondent estimated that he had been in the business of transporting tires for approximately 12 to 14 years. Respondent started his business when Michigan enacted their scrap tire laws. Respondent thought he was one of the first transporters in the State of Michigan.
 - Respondent recalled he was registered in Ohio to transport scrap tires, but had let that registration lapse three to four years ago.
 - Respondent recalled receiving two NOVs instructing him to cease transporting scrap tires in Ohio. Respondent told investigators, "I know I'm breaking the law." Respondent stated his last NOV from Ohio EPA was received by him approximately six weeks ago. At the time, Respondent decided to stop transporting scrap tires in Ohio. However, Respondent received a telephone call in December 2006 from a long time customer to pick up their tires. Respondent stated that he decided to make the pick-up and did so on a Friday afternoon and Saturday to avoid detection by authorities.
 - Respondent estimated that in 2006 he transported scrap tires in Ohio approximately 12 to 24 times.
 - Respondent stated that he was working with Energis LLC in Michigan where he transports scrap tires. Respondent planned on transporting scrap tires in Ohio under Energis's own pending scrap tire registration.
 - OSI and BCI informed Respondent that he cannot transport scrap tires in Ohio until he is registered as a scrap tire transporter.
12. On February 7, 2007, OSI and BCI interviewed Tim Gentner of Energis LLC via telephone to obtain further details about Respondent transporting scrap tires to Holcim, Inc. / Energis LLC. Mr. Gentner stated that Energis LLC, which is a subsidiary of Holcim, Inc. was in discussions with Respondent to operate under Energis's pending scrap tire transporter registration. Holcim, Inc. legally operates a cement kiln in Michigan and utilizes scrap tires for fuel.
13. On June 18, 2007, OSI contacted Tim Gentner of Energis LLC. Mr. Gentner stated that Energis LLC had received their scrap tire transporter registration and that Respondent is authorized by Energis LLC to operate under the registration.

V. ORDERS

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

1. Effective immediately, Respondent shall transport scrap tires in Ohio only as a scrap tire transporter registered in Ohio or under the registration of another scrap tire transporter registered in Ohio.
2. Respondent shall pay Ohio EPA the amount of \$2,500.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the environmental remediation fund established pursuant to ORC Section 3734.281. The civil penalty shall be paid in installments of \$100.00 per month for 25 continuous months, with the first payment due June 15, 2008. Subsequent payments are due the 15th of each month. Payments shall be made by official check made payable to "Treasurer, State of Ohio" for the stated amount and submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent. A copy of the check shall be sent to Ohio EPA, Division of Solid and Infectious 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 Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Solid and Infectious 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 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's 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 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
Northwest District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398

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.

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 the violations specifically cited herein.

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.

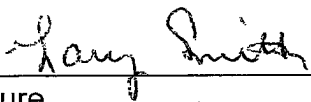
IT IS SO ORDERED AND AGREED:



Chris Korleski, Director

IT IS SO AGREED:

Larry Smith



Signature

5-3-08

Date

LARRY SMITH

Printed or Typed Name