



State of Ohio Environmental Protection Agency

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

September 29, 2008

Charles Alborn  
2090 Riceford Road SW  
East Sparta, OH 44626

RECEIVED  
OHIO EPA  
2008 SEP 30 AM 10:08  
LEGAL OFFICE

**Re: 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  
Murat Tukul, NEDO, DSIWM  
Jeff Hurdley, OEPA, Legal

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

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.  
SEP 29 2008  
ENTERED ELECTRONIC JOURNAL

In the Matter Of:

Charles Alborn  
2090 Riceford Road SW  
East Sparta, Ohio 44626

:  
:  
:

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: [Signature] Date: 9-29-08

These Director's Final Findings and Orders ("Orders") are issued to Charles Alborn ("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 his 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 defined in ORC Chapter 3734. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Edna Elliot is the owner of approximately 42.48 acres of land identified in the records of the Stark County Recorder's Office by quit claim deed-dower recorded July 19, 1988, in Volume 712, Pages 912 and 913 (hereinafter, the "Property"). The Property is located at 2090 Riceford Road SW, Pike Township, Stark County, Ohio.
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. There are currently at least 4,000 scrap tires illegally disposed on the ground at the Property, an unknown number of buried scrap tires mixed with solid waste,

and an unknown number of scrap tires mixed with industrial waste.

4. Respondent resides on the Property and operates a salvage business at the Property and/or has otherwise caused or allowed the accumulation of scrap tires at the Property.
5. The Property is neither licensed nor permitted as a scrap tire collection facility, a solid waste disposal facility, a junk yard, or any type of legitimate recycling facility.
6. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).
7. OAC Rule 3745-27-01(S)(6) defines "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."
8. The open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) which respectively state that "[n]o person shall dispose of solid wastes by open burning or open dumping" and "[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 ... 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."
9. OAC Rule 3745-27-01(O)(4)(b) defines "open dumping" as including "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."
10. 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) through (B)(11).
11. 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.

12. Respondent has created or allowed an unpermitted, unlicensed "solid waste disposal facility" and "open dump", as those terms are defined OAC Rules 3745-27-01(S)(24) and (O)(3), respectively, in violation of ORC Sections 3734.03 and 3734.05(A), and OAC Rule 3745-27-05(C).
13. The Stark County Health Department ("SCHD") is on the Director's approved list and is responsible for enforcement of Ohio's solid waste laws within its jurisdiction.
14. On May 8, 2007, Ohio EPA and the SCHD inspected the Property and, *inter alia*, observed scrap tires open dumped on the ground, scrap tires mixed with other wastes, and buried scrap tires.
15. On May 15, 2007, Ohio EPA inspected the Property with the Ohio Attorney General's Office's Bureau of Criminal Identification and Investigation and the United States Environmental Protection Agency, and they observed scrap tires open dumped at the Property.
16. By notice of violation ("NOV") correspondence dated August 3, 2007, Ohio EPA informed Respondent of violations of ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires and OAC Rule 3745-27-60(B) for improper storage of scrap tires. Furthermore, Ohio EPA instructed Respondent to abate the public health hazard by immediately contracting with a registered scrap tire transporter to remove the scrap tires to an appropriately registered or licensed scrap tire facility.
17. By NOV correspondence dated August 10, 2007, the SCHD directed Respondent to empty containers and tires of water to prevent mosquito larvae from hatching and to remove all scrap tires and dispose of them at a licensed tire facility by August 31, 2007.
18. By Public Health Order dated December 10, 2007, the SCHD directed Respondent to empty containers and tires of water to prevent mosquito larvae from hatching in the warmer months, and to remove all scrap tires and dispose of them at a licensed tire facility by January 30, 2008.
19. Given the proximity of Respondent's scrap tire dump to the Village of East Sparta and sensitive sub-populations such as pre-schools, elementary schools, and high schools, the potential for a tire fire plume to reduce visibility on Interstate 77, and in consideration of a tire fire adversely impacting Sulphur Run, a tributary of the Tuscarawas River, and the public health, the Director has determined that the accumulation of scrap tires on the Property caused or allowed by Respondent constitutes a danger to the public health or safety or to the environment.

20. ORC Section 3734.85(A) 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).
21. ORC Section 3745.85(A) 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 ....”

## **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.
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 Stark County Health Department during normal operating hours. Respondent shall retain copies of mosquito control records for a minimum 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)(1) through (B)(11).

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, partially buried scrap tires, and buried scrap tires, and shall arrange for their transportation, by a scrap tire transporter registered in the State of Ohio:
  - a. to a scrap tire storage, monofill, monocell, or recovery facility which is operating in accordance with ORC Chapter 3734. and the rules adopted thereunder; or
  - b. to a scrap tire storage, monofill, monocell, or recovery facility in another state operating in compliance with the laws of that state; or
  - c. to any other solid waste disposal facility in another state that is operating in accordance with the laws of that state and that is authorized to accept scrap tires for disposal.
5. Respondent shall obtain receipts from the registered transporter and the authorized scrap tire facility or solid waste disposal facility indicating weight, volume or number of scrap tires transported and disposed and shall forward such documentation to Ohio EPA within fourteen (14) days after completion of Order No. 4.
6. Respondent shall continue to comply with Order No. 2, above, until such time as all scrap tires have been removed from the Property.
7. To the extent that the Property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use his best efforts to secure from such persons access for Respondent and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided to Ohio EPA upon request. If any access required to implement these Orders is not obtained within seven (7) days after the effective date of these Orders, or within seven (7) days after the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

## **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 Enforcement Coordinator 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 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 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.

#### **VIII. NOTICE**

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

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Solid and Infectious Waste Management  
2110 East Aurora Road  
Twinsburg, OH 44087-1924  
Attn: DSIWM Supervisor

and

Stark County Health Department  
3951 Convenience Circle, NW  
Canton, Ohio 44718

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

#### **IX. 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.

#### **X. 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:**

**Ohio Environmental Protection Agency**

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

Chris Korleski  
Director