



State of Ohio Environmental Protection Agency

Northeast District Office

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

August 2, 2007

**RE: TRUMBULL COUNTY
NAYPAVER PROPERTY**

CERTIFIED MAIL

Frank R. Naypaver and
Margaret E. Naypaver
351 Florine
Leavittsburg, OH 44430

Dear Mr. Naypaver:

On June 1, 2007 I conducted an inspection of property located on Reisher Road in Trumbull County. This property was the subject of a consent order permanent injunction ("COPI") filed in the Trumbull County Court of Common Pleas on March 20, 2003 and Ohio EPA Findings and Orders dated August 10, 2006. Kevin Francis of the Trumbull County Health Department accompanied me during this inspection. Mr. Francis remained in the car as Frank R. Naypaver provided access to me but stated that he would not provide access to Mr. Francis. Margaret Naypaver was on site on this date and I spoke with her at the completion of this inspection.

The purpose of this inspection was to determine compliance with the August 10, 2006, Findings and Orders, March 20, 2003, COPI, Ohio Revised Code ("ORC") Chapter 3734. Ohio Administrative Code ("OAC") Chapter 3745. and to ascertain the current conditions on the site.

On January 27, 2007 the local fire department notified Ohio EPA Emergency Response Section that a tire fire had occurred on the property. The attached photos show scrap tires that were on the surface of the ground on January 30, 2007 in the area of the fire. On that date, Ohio EPA provided guidance to Frank R. Naypaver that all exposed tires must be removed from the site, scrap tires may not be buried, and receipts must be kept from all tires removed from the site. Documentation of the January 30, 2007 inspection was sent to Frank J. Naypaver on February 27, 2007.

As seen in the attached photos, scrap tires that were on the surface of the ground in the area of the fire on January 30, 2007 were not present on June 1, 2007. These scrap tires were either buried or removed from the site and the required reports were not provided.

The appearance of the site indicates that the scrap tires that were buried prior to January 30, 2007 have not been removed and the fire residuals have not been removed. To this date, Ohio EPA has not received any documentation that the procedures required after a tire fire have been followed. Ohio EPA has not received any documentation showing if tires have been removed from the site or where they have been transported.

Additional scrap tires have been noted protruding through the surface of the ground in the area where the fire occurred and in other areas over the entire eastern end of the lake.

The owner or operator has violated the following requirements of the March 20, 2003 COPI and the August 10, 2006 Findings and Orders, ORC Chapter 3734. and OAC Chapter 3745:

1. **August 10, 2006 Findings and Orders, Order Number 2 states:** *“Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of all unburied scrap tires on the Property by removing a minimum of 500 scrap tires each month, and shall arrange for their transportation, by a registered scrap tire transporter”.*
2. **August 10, 2006 Findings and Orders, Order Number 4 states:** *“should additional scrap tires become unburied do to erosion those tires shall be disposed of as outlined in Order No. 2 above. Additionally, Respondents are further ordered to replace the scrap tires in the embankment that become unburied with a substance that complies with Ohio’s solid waste regulations so that the lake remains properly supported and structurally sound.*
3. **March 20, 2003 COPI states:** *“The Court Orders that Defendant Naypavers are permanently enjoined from depositing, burning, burying, or otherwise disposing of any further solid wastes, including scrap tires, on the properties known as Permanent Parcels 41-393850 and 41-393851 in Trumbull County, Ohio....Defendant Naypavers are further ordered to remove each tire buried in the embankment that becomes “unburied” in the future by virtue of water erosion”.*
4. **Ohio Revised Code 3734.03 states:** *“No person shall dispose of solid wastes by open burning or open dumping, except as authorized by the director of environmental protection.”*
5. **Ohio Administrative Code 3745-27-05(C) states:** *“No 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.”*

Failure to comply with the requirements after a fire occurred is a violation of the following:

- a. **OAC 3745-27-79(B)(1)(a) states:** *“The responsible individual shall characterize and, if necessary, remediate areas of contamination resulting from the open burning of scrap tires...After the occurrence of a fire at a site or facility.”*

2. **OAC 3745-27-79(B)(3) states:** *“Whenever there is a fire at a site or facility, the responsible individual shall immediately do the following:*
 - (a) *Notify local police and fire agencies.*
 - (b) *Notify the Ohio Epa’s emergency response team using their twenty-four hour toll-free number [800-282-9378].*
 - (c) *Take all reasonable actions necessary to suppress the fire and to protect human health and safety and the environment.*
 - (d) *Take all reasonable measures necessary to contain any residuals including but not limited to pyrolytic oil and water that result from suppressing a fire at the site or facility. These measures shall include establishing berms, dikes or other containment devices where necessary.*
 - (e) *Take all reasonable measures necessary to ensure that fires do not occur, recur, or spread to other areas of the site or facility. These measures shall include removing or isolating tires and/or portable containers.*

3. **OAC 3745-27-79(C)(1) states:** *“After the occurrence of a fire at a site or facility, the responsible individual shall complete the following actions, as prioritized:*
 - (a) *Priority 1: within seven days of the occurrence of a fire at a site or facility, notify, in writing, the Ohio EPA’s district office in which the site or facility is located, the local solid waste management district, the Ohio EPA’s central office, and the local health department. The responsible individual shall include in the notification the name and telephone number of the contact person reporting the fire; the address or location of the scrap tire fire; the date and duration of the fire; and the quantity of tires involved, to the extent known.*
 - (b) *Priority 2: remove all whole and partially burned tires as soon as possible to reduce the possibility of additional fires. Partially burnt tires shall be disposed of as solid waste. Whole tires with melted or charred surfaces and partially burnt tires shall not be used in civil engineering projects or disposed of in a scrap tire monofill or monocell per ASTM d 6270, “standard practice for use of scrap tires in civil engineering applications,” paragraph 6.10.2: “In no case shall the tire shreds contain the remains of tires that have been subjected to a fire because the heat of a fire may liberate liquid petroleum products from the tire that could create a fire hazard when the shreds are placed in a fill.” Whole tires that can not be recycled due to exposure to high temperatures shall be disposed of as solid waste.*
 - (c) *Priority 3: containerize all visible fire residue to avoid further migration of contaminants by wind and precipitation.*

(d) Priority 4: characterize the containerized fire residual to determine if the material meets the definition of a hazardous waste, as defined in chapters 3745-51 and 3745-52 of the administrative code.

(e) Priority 5: remove all containerized fire residue from the site or facility and dispose of this residue in a licensed sanitary landfill if characterized as a solid waste; or manage and dispose in accordance with applicable state and federal laws."

4. **OAC 3745-27-79(C)(2)(a) states:** *"The actions described in paragraphs (C)(1)(b), (C)(1)(c), (C)(1)(d), and (C)(1)(e) of this rule shall be...Completed within ninety days at any site or facility where less than ten thousand passenger tire equivalents (PTES) are involved in a fire."*

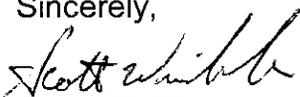
Please respond to the above violations in writing within 14 days of receipt of this letter. Your response should include receipts proving the scrap tires have been transported in accordance with state law to an authorized scrap tire storage, monofill, monocell, or recovery facility and documentation that shows you have returned to compliance with the rules and regulations listed above.

Please be aware that OAC 3745-27-79(A)(2) states that this rule is applicable to the "responsible individual" which includes, but is not limited to, the owner, operator, registrant, permittee, licensee, and/or person who conducted or allowed the accumulation or open burning of scrap tires.

Nothing in this letter shall be construed to authorize any waiver from the requirements of any applicable state or federal laws or regulations. This letter shall not be interpreted to release the Entity from responsibility under Chapters 3704, 3714, 3734, or 6111 of the Ohio Revised Code or under the Federal Clean Water or Comprehensive Environmental Response, Compensation, and Liability Acts for remedying conditions resulting from any release of contaminants to the environment.

If you have any questions, please call me at (330) 963-1220.

Sincerely,



Scott Winkler
Division of Solid and
Infectious Waste Management

SW:ddw

Enclosure

cc: Frank Migglioni , Trumbull County Health Department
Kelly Jeter, DSIWM, CO
George Horvath, AGO
[Tukel/TIRE/EACN 1/Cor/47]