



State of Ohio Environmental Protection Agency

**Southeast District Office**

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

January 7, 2008

Mr. David Delabar  
1189 Comanche Circle  
Lincolnton, GA 30817

Dear Mr. Delabar:

On December 27, 2007, I conducted an inspection of your property located at the end of Simpson Road to determine if you have cleaned up or have begun a cleanup of the scrap tires and other solid wastes that exist on your property and on the banks of Scioto Brush Creek. I observed that scrap tires and other solid wastes remain on the property and it appears that no effort to remove the scrap tires and solid wastes has occurred.

The last time I heard from you was a letter that you sent the Agency dated March 30, 2006. After internal discussions with members from the Scrap Tire Management Unit and Compliance Monitoring and Enforcement Section within the Ohio EPA Central Office located in Columbus, Ohio who has also inspected the Delabar property in the past, the Agency offers the following responses to your letter.

Two of the terms used in your letter have very specific definitions in the Ohio Revised Code and the Ohio Administrative Code. The term "open dump" does not relate to how the scrap tires were placed, but relates to the fact that the scrap tires are located at a place that is not authorized to store, dispose, or otherwise use the scrap tires. The term "scrap tire" refers to any tire that has been used on a vehicle for its intended purpose but is no longer in use on a vehicle. Ohio's scrap tire laws and regulations were implemented to deal with the ongoing problem of scrap tires winding up in the wrong places and not being properly recycled or disposed.

The scrap tires at this site came to Ohio EPA's attention because of periodic complaints from property owners downstream of your property. Their complaint is that scrap tires occasionally wash onto their properties during flooding and consequently they have the expense of properly disposing of the scrap tires. While investigating such complaints, the Delabar property has been identified as the source of these scrap tires.

Several attempts have been made over the years to use scrap tires in a variety of ways including erosion control along stream banks. Eventually all such projects along stream banks have failed, primarily because scrap tires are neutrally buoyant and flood waters will eventually carry the scrap tires downstream. Scrap tires were initially selected for stream bank erosion control projects because they were inexpensive and not because they were the right material. Additional engineering measures such as stakes or wire to hold the scrap tires in place on steep slopes have also eventually given way to erosional forces.

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Ohio's scrap tire regulations recognize many types of projects that are beneficial uses of scrap tires in Ohio Administrative Code Rule 3745-27-78. This rule also provides a mechanism for approval of new beneficial uses of scrap tires. Erosion control is not one of the pre-approved beneficial uses because the scrap tires consistently end up being eroded away and causing additional downstream problems.

Improper storage of scrap tires poses several potential problems for the local residents, environment, and the emergency crews in the area. Scrap tires provide an optimal breeding ground for mosquitoes. Mosquitoes identified at tire piles in Ohio can carry St. Louis Encephalitis, La Crosse Encephalitis, Yellow Fever, Dengue Fever and West Nile Virus.

In the event scrap tires catch fire, the smoke becomes a source of air pollution and can cause respiratory problems for those that breathe the smoke. Tire fires are also difficult for emergency crews to extinguish. Additionally, the pyrolytic oil released from burning tires can pollute nearby waters. Open dumping and open burning of solid waste is a violation of Chapter 3734 of the Ohio Revised Code (ORC) and Chapter 3745-27 of the Ohio Administrative Code (OAC).

The remaining scrap tires on your property continue to be in violation of the following referenced laws and rules.

1. ORC Section 3734.03 states: "No person shall dispose of solid wastes by open dumping or open burning."

OAC Rule 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 responsible for the open dumping, the owner of the property, or the person who allows 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."

Scrap tires and other solid wastes are open dumped on the property. This is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C).

2. Pursuant to OAC Rule 3745-27-60(B), the storage of scrap tires in any amount outside or inside a trailer, vehicle, or building is deemed a nuisance, a hazard to public health or safety or a fire hazard unless the tires are stored in accordance with specific standards set forth under OAC Rule 3745-27-60(B)(1) through (11).

The scrap tires on the property are a nuisance, a hazard to public health or safety or a fire hazard because they are improperly stored and managed. This is a violation of OAC Rule 3745-27-60(B).

3. Pursuant to OAC Rule 3745-27-60(B)(7)(d) - Scrap tire storage piles of more than five hundred scrap tires shall be separated from other scrap tire storage piles and from buildings and structures by a fire break with a width equal to or greater than fifty-six feet in accordance with the fire break chart described in appendix I to Rule 3745-27-65 of the OAC.

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The scrap tire storage piles on the property are not separated from other scrap tire storage piles by a fire break with a width equal to or greater than fifty-six feet. This is a violation of OAC Rule 3745-27-60(B)(7)(d).

4. Pursuant to OAC Rule 3745-27-60(B)(11) - Fire breaks shall be maintained to be free of combustible material including but not limited to weeds and leaves.

The scrap tires on the property are surrounded by combustible materials. This is a violation of OAC Rule 3745-27-60(B)(11).

5. Pursuant to OAC Rule 3745-27-60(B)(7)(e) - Sufficient fire breaks shall be maintained to allow access of emergency vehicles at all times to and around the scrap tire storage piles and areas.

Sufficient fire breaks are not maintained on the property to allow access of emergency vehicles at all times to and around the scrap tires storage piles and areas. Failure to maintain sufficient fire breaks is a violation of OAC Rule 3745-27-60(B)(7)(e).

6. The scrap tire regulations also require control of disease vectors related to any storage of scrap tires. Pursuant to OAC Rule 3745-27-60(C)(1)(b), scrap tires need to be stored such that water does not accumulate in them and that they shall be kept free of water at all times. Pursuant to OAC Rule 3745-27-60(C)(2), mosquito control must be maintained by keeping all tires dry or by continuing applications of a pesticide or larvicide to all scrap tires stored outdoors at no greater than thirty-day intervals or as recommended by the manufacturer or formulator.

It appears that no mosquito control is being conducted by you at the property, and many tires are full of water. This is a violation of OAC Rule 3745-27-60(C)(1)(b) and OAC Rule 3745-27-60(C)(2).

Open dumping of scrap tires and solid wastes must cease immediately. All scrap tires and assorted solid wastes disposed at the described location are to be removed from the property and taken to a licensed solid waste disposal facility for proper disposal.

Obtain copies of receipts from the landfill or waste hauler that received the waste and provide those copies to this District Office in order to document your compliance. Please respond to this District Office within fifteen days of receipt of this letter to inform me of your intentions and actions taken regarding the open dump. Failure to comply with Ohio's open dumping and scrap tire laws and rules may result in escalated enforcement, including litigation and the imposition of civil penalties.

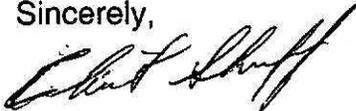
The disposal facility located nearest to you is the Pike Sanitation Landfill at 11775 State Route 220, Waverly, Ohio. The Portsmouth Exempt Transfer Station is also located on Elm Street in Portsmouth, Ohio. You may choose to use other permitted and licensed facilities as well.

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Compliance with the requirements outlined in the letter, or the solid and infectious waste provisions contained on ORC Chapter 3734 and the rules promulgated thereunder, does not relieve the owner of his or her obligation to comply with other applicable State and Federal laws and regulations.

I and other members of the Scrap Tire Management Unit would welcome the opportunity to meet you and inspect the Delabar site with you at a convenient time during business hours. Should you have questions, please contact me at this office at (740) 380-5246.

Sincerely,



Clint Shuff, R.S.  
Environmental Specialist  
Division of Solid and Infectious Waste Management

CS/jg

cc: Matt Boyer, DSIWM, CO  
Robert Large, DSIWM, CO  
Mike Trapp, Scioto County Health Department  
Dan Palmer, Lawrence and Scioto County Solid Waste Management District