



State of Ohio Environmental Protection Agency

Northwest District Office

347 North Dunbridge Rd.
Bowling Green, OH 43402-9398

TELE: (419) 352-8461 FAX: (419) 352-8468
www.epa.state.oh.us

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

**Re: Notice of Violation
Lucas County**

June 22, 2009

CERTIFIED MAIL

Agent: V. Robert Candiello
Pheasant Run Development LLC
4859 W. Sylvania Avenue
Suite A
Toledo, Ohio 43623

Dear Mr. Candiello:

On June 11, 2009, Ms. Jodi Vaughan, representing the Toledo-Lucas County Health Department, and I, representing the Ohio Environmental Protection Agency (Ohio EPA), conducted an inspection of the property owned by Pheasant Run Development LLC located at 200 S. Meilke Road, Spencer Township, Lucas County, Ohio (property). This inspection was conducted to determine if the property is in compliance with Ohio's scrap tire laws and regulations and with the Director's Final Findings and Orders (DFF&Os) issued January 29, 2009.

Several piles of scrap tires were observed on the property: one in a vegetated area in the northeast corner of the property, approximately 300 feet from Meilke Road, and the rest in a relatively open field at the rear of the property. It was estimated that about 6000 scrap tires were located throughout the property. The scrap tire pile in the northeast corner of the property appeared to be approximately 30 feet from a barn on the property north of your property and was estimated to contain about 1000 scrap tires.

Solid waste is defined in Ohio Administrative Code (OAC) Rule 3745-27-01(S)(23) as:

"Solid waste" means such unwanted residual solid or semisolid material, including but not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt and debris, as results from industrial, commercial, agricultural, and community operations, . . .

Disposal of scrap tires at the aforementioned property constitutes open dumping as that term is defined in OAC Rule 3745-27-01(O)(4):

Lucas Co Tires

"Open dumping" means the following: . . .

- (b) The deposition of solid wastes that consist of scrap tires into waters of the state, and also means 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*

The owner/operator of this site is in violation of the following rules and laws:

1. Ohio Revised Code (ORC) § 3734.03 which states in pertinent part:
No person shall dispose of solid wastes by open burning or open dumping, except as authorized by the director of environmental protection. . .
2. OAC Rule 3745-27-05(C) which states in pertinent part:
No person shall conduct, permit, or allow open dumping. . .
3. ORC § 3734.81(A) which states in pertinent part:
. . . no person shall operate a scrap tire collection, storage, monocell, monofill, or recovery facility without a license . . .
4. ORC § 3734.76(C) which states in pertinent part:
. . . no person shall establish a new, or modify an existing, scrap tire storage facility without first either registering with the director by submitting an application for a scrap tire storage facility registration certificate . . .
5. OAC Rule 3745-27-61(B) which states in pertinent part:
An application for a registration certificate as required by section 3734.75, 3734.76, or 3734.78 of the Revised Code, shall be submitted to and approved by the director, before the establishment or modification of the scrap tire collection, class II storage, or class II scrap tire recovery facility is begun. . .
6. ORC § 3734.05(A) which states in pertinent part:
. . . no person shall operate or maintain a solid waste facility without a license . . .
7. ORC § 3734.02(C) which states in pertinent part:
. . . no person shall establish a new solid waste facility or infectious waste treatment facility, or modify an existing solid waste facility or infectious waste treatment facility, without submitting an application for a permit . . .

These violations will continue until all scrap tires are removed from the property and properly disposed.

In addition, in accordance with OAC Rule 3745-27-60(B), the storage of scrap tires in any amount is deemed a nuisance, a hazard to public health or safety, or fire hazard unless the scrap tires are stored in accordance with the specific standards set forth in OAC Rule 3745-27-60(B)(1) - (11).

The scrap tires on this property are a nuisance, a hazard to public health or safety, and a fire hazard and the owner/operator of the property is in violation of:

8. OAC Rule 3745-27-60(B)(7)(d) which requires:
Scrap tire storage piles of more than five hundred scrap tires including single or multiple racks containing a total 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 in appendix I to rule 3745-27-65 of the Administrative Code.
9. OAC Rule 3745-27-60(B)(7)(e) which requires:
Sufficient fire breaks shall be maintained to allow access of emergency vehicles at all times to, around, and between the scrap tire storage piles and areas.

These violations will continue until the scrap tire pile in the northeastern portion of the property is removed or moved so that it is at least fifty-six feet from the adjacent barn and fire lanes at least fifty-six feet wide that allow the passage of emergency vehicles are cleared around all scrap tire piles.

In addition, the owner/operator is in violation of the following Orders from the January 29, 2009 DFF&Os:

10. **Order No. 1**, which states:
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 provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3), to Ohio EPA Northwest District Office within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.

No mosquito control records have been received by the Ohio EPA Northwest District Office. The owner/operator is in violation of Order No. 1 for failing to implement mosquito control measures and/or provide documentation of their mosquito control efforts as ordered.

11. **Order No. 3**, which states:

Not later than thirty (30) days after the effective date of these Orders, Respondent shall establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B).

Fire lanes have not been established around the pile of scrap tires in the northeast corner of the property. Scrap tires are scattered in small piles across the relatively open field at the rear of the property. The owner/operator is in violation of Order No. 3 for failing to establish storage piles and fire lanes as ordered.

12. **Order No. 4**, which states:

Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of 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 in Ohio, 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. During the 120 day period, Respondent shall remove, transport and dispose of at least 2500 scrap tires within 30 days, and 2500 scrap tires every 30 days thereafter with all of the scrap tires being removed, transported and disposed within 120 days after the effective date of these Orders. 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 Northwest District Office on a monthly basis by the 10th day of each month.

Approximately 6000 scrap tires remain on the property. No receipts from a registered transporter or disposal facility have been received by the Ohio EPA Northwest District. The owner/operator is in violation of Order No. 4 for failing to remove scrap tires and provide documentation of appropriate transport and disposal as ordered.

13. **Order No. 5**, which states:

Respondent shall submit monthly progress reports until all scrap tires are removed from the Property. Respondent's monthly progress reports, due to Ohio EPA Northwest District Office by the 10th day of each month, shall summarize Respondent's efforts to comply with the requirements of these Orders.

Agent: V. Robert Candiello
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The first progress report shall be delivered to Ohio EPA Northwest District Office no later than the 10th day of the month immediately following the month that these Orders become effective.

No monthly progress reports have been received by the Ohio EPA Northwest District Office. The owner/operator is in violation of Order No. 5 for failing to submit monthly progress reports as ordered.

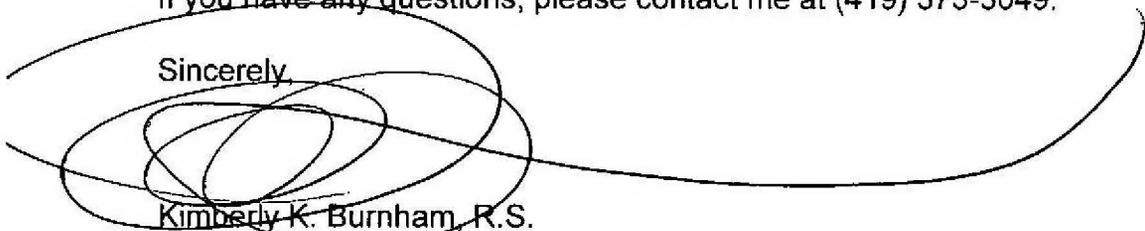
The owner/operator has failed to comply with the provisions of the January 29, 2009, DFF&Os. Ohio EPA may seek legal or equitable relief to enforce the terms of the Director's Final Findings and Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary.

This correspondence addresses specific observations only for the areas of the site that were inspected. Nothing present in, nor absent from this correspondence is intended to mean that no other violations existed at the site at the time of inspection.

Compliance with the requirements outlined in this letter, or the solid and infectious waste provisions contained in the Ohio Revised Code Chapter 3734 and the rules promulgated thereunder, does not relieve the owner/operator from their obligations to comply with other applicable state and federal laws and regulations.

If you have any questions, please contact me at (419) 373-3049.

Sincerely,



Kimberly K. Burnham, R.S.
Environmental Specialist
Division of Solid and Infectious Waste Management

//lr

pc: Jodi Vaughan, Toledo-Lucas County Health Department
Matt Boyer, DSIWM, CO
Janine Maney, Ohio EPA, Legal
DSIWM-NWDO File: Lucas County, Tires
Certified Mail Receipt Number 7007 2560 0000 4485 5720

ec: Mike Reiser, DSIWM-NWDO

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>V. Robert Candello</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p>
<p>1. Article Addressed to:</p> <p><i>DSIWM - Kib B</i></p> <p>AGENT V. Robert CANDELLO PHENSAT RUN Development LLC 4855 W. Sylvania Avenue Suite A TOLEDO, OH 43623 OHIO 43623</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p><i>V. Robert Candello</i></p> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
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<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	

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Total Postage & Fees	\$ <i>5.71</i>										
<p>Sent To <i>Robert Candello - PhenSAT Run Dev LLC</i></p> <p>Street, Apt. No.; or PO Box No. <i>4855 W. Sylvania Ave Suite A</i></p> <p>City, State, ZIP+4 <i>TOLEDO OH 43623</i></p>											
<p>PS Form 3800, August 2006 See Reverse for Instructions</p>											

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