OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Wassim Antoun 1627 Lyndhurst Road Cleveland, Ohio 44124 And Joseph Douaihy 6556 Maplewood Road, APT 203 Mayfield HTS, Ohio 44124 Respondents	:	Director's Final Findings and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Wassim Antoun and Joseph Douaihy (collectively "Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3714.12, 3734.13, and 3734.85.

II. PARTIES

These Orders shall apply to and be binding upon Respondents, and their heirs and successors in interest liable under Ohio law. No change in ownership of the Property (as hereinafter defined) shall in any way alter Respondents' responsibilities under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapters 3714. and 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondents Antoun and Douaihy are the former owners of a 36.78 acre parcel of land identified in the records of the Geauga County Recorder's Office as Parcel number 30-010100. The parcel is located at 7071 Ledge Road, Thompson, Ohio ("Property").

2. Respondents operated a junk yard and auto salvage business on the Property under the names Affordable Auto Parts and Wrecking, and Thompson Auto Salvage.

3. When Respondents purchased the Property in 2003 they signed a Real Estate Purchase and Sales Agreement ("Sales Agreement") with the former owner, also an auto salvage dealer, agreeing to properly manage scrap tires located on the Property. Specifically, in Section 3, page 3 of the Sales Agreement it states that Respondents agree to assume full liability for the maintenance and/or removal of various tire piles and debris on the Property in accordance with Geauga County's requirements.

4. Pursuant to Ohio Administrative Code ("OAC") Rule 3745-27-61(A)(2)(c), the requirement to obtain a scrap tire collection facility registration certificate does not apply to the premises of a business that removes tires from motor vehicles in the ordinary course of business provided the business does not exceed a single scrap tire storage area of two thousand five hundred square feet.

5. Based on inspections of the Property conducted by Geauga County on May 6, 2004, July 6, 2004, September 2, 2004, and July 19, 2005, the tires present on the Property were stored in compliance with OAC Rule 3745-27-61(A)(2)(c).

6. However, in an inspection report dated October 5, 2005, Geauga County noted that Respondents' tire pile had increased in size and that the Geauga County inspector had spoken with Respondent Antoun regarding the need to reduce the size of Respondents' tire pile.

7. There are currently an estimated 8,000 scrap tires, which exceed the two thousand five hundred square feet storage area, along with comingled solid waste and construction and demolition debris ("C&DD") disposed of on the Property in violation of Ohio's Solid Waste and C&DD laws.

8. Each Respondent is a person as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).

9. The Property is neither licensed nor permitted as a scrap tire collection facility nor a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27 and 3745-37.

10. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24).

11. 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, 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."

12. OAC Rule 3745-27-01(O)(4)(b) defines open dumping as "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."

13. 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) - (10).

14. OAC Rule 3745-400-04(B) states that "No person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code."

15. OAC Rule 3745-400-01(S) defines illegal disposal as "the disposal of construction and demolition debris at any place other than a construction and demolition debris disposal facility operated in accordance with Chapter 3714. of the Revised Code, and Chapters 3745-400 and 3745-37 of the Administrative Code, or a solid waste disposal facility operated in accordance with Chapter

3745-27 of the Administrative Code, and licensed in accordance with Chapter 3745-37 of the Administrative Code, or as otherwise authorized by this Chapter."

16. Geauga County and Ohio EPA conducted inspections of the Property on April 27, 2006 and May 15, 2006. In correspondence dated May 24, 2006, Geauga County notified Respondent Antoun of the following:

    a. A considerable amount of solid waste was found open dumped on the Property. The correspondence directed Respondent Antoun to remove the solid waste and dispose of the solid waste at a licensed solid waste disposal facility;

    b. Based on the previous inspection of October 5, 2005, Respondent Antoun had agreed to reduce the size of the tire pile by 500 tires per month. The correspondence indicated that as of the current inspection it was apparent that 500 tires a month were not being removed as agreed and that an additional pile of 1000 tires was found at the rear of the Property that had not been identified previously;

    c. The correspondence further directed Respondent Antoun to submit a written compliance plan to Geauga County describing how Respondents will dispose of all solid waste on the Property by September 1, 2006; reduce the number of tires on the Property by 500 tires a month until 1000 tires or less were remaining on the Property; apply a larvacide to control mosquitoes, and maintain fire lanes assuring that access to the tire piles is provided to the local fire department at all times.

17. Geauga County conducted an inspection of the Property on June 22, 2007. In correspondence dated June 25, 2007, Geauga County notified Respondent Antoun of the following violations:

    a. OAC Rule 3745-27-60(B)(8) for failure to control mosquitoes;

    b. OAC Rule 3745-27-60(B)(6)(a) for failure to maintain a single tire pile less than or equal to 2500 square feet in basal area.

    The June 25, 2007 NOV further stated that while a considerable amount of solid waste had been removed from the Property and properly disposed of, a significant amount of open dumped solid waste remained. Additionally, the NOV stated that Geauga County had never received a written compliance schedule for the removal of scrap tires and directed Respondent Antoun to submit a written compliance schedule to Geauga County within 30 days of the receipt of the NOV

to avoid intervention by the Ohio EPA to remove the tire piles and assess the cost of removal as a lien against the Property.

18. On August 17, 2007, Geauga County hand delivered a request for Respondent Antoun to appear before the Board of Health on August 22, 2007.

19. Geauga County conducted an inspection of the Property on August 16, 2007. In correspondence dated August 21, 2007, Geauga County notified Respondent Antoun that Respondents remained in violation of OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control. The August 21, 2007 NOV further reminded Respondent Antoun that Geauga County had yet to receive a written compliance schedule for removal of tires on the Property and that Geauga County requested that Respondent Antoun appear before the Board of Health on August 22, 2007, and present a case for why the violations at the Property should not be prosecuted to the fullest extent of the law.

20. On August 22, 2007, Respondent Antoun appeared before the Geauga County Health Commissioner to discuss the on-going violations at the Property. According to Geauga County's summary of the hearing dated August 28, 2007, the following items were discussed at the hearing:

    a. Respondent Antoun stated he was aware that tires were present on the Property when he and Respondent Douaihy bought the Property;

    b. Respondent Antoun stated he was currently facing financial difficulties due to Respondent Douaihy abandoning another joint venture and taking assets out of the country; leaving very little cash available to address the issues at the Property;

    c. Respondent Antoun stated he was willing to work with Geauga County to correct the violations;

    d. The Health Commissioner informed Mr. Antoun that mosquito control at the Property must commence without delay and be maintained in accordance with applicable regulations;

    e. The Health Commissioner directed Mr. Antoun to prepare and submit for his approval a detailed schedule for the removal of scrap tires and other solid waste by September 10, 2007.

21. On January 29, 2008, Geauga County provided Respondent Antoun with a compliance plan for the Property that included Respondent Douaihy. This compliance plan was provided following the request of Respondent Antoun for a compliance plan that included the signature of his business partner, Respondent Douihy. The transmittal letter, included with the revised compliance plan, informed Respondent Antoun that failure to sign and begin implementation of the compliance plan within fifteen days of receipt would necessitate Geauga County issuing direct orders for the removal of scrap tires and solid wastes at the Property with a more stringent compliance schedule.

22. Respondents failed to sign and implement the compliance plan. Therefore on March 7, 2008, Geauga County issued an Order to Execute Removal that contained in general, the following provisions:

    a. Removal of scrap tires from the Property shall begin no later than March 25, 2008 at a reduction rate of not less than 500 scrap tires per month and shall continue until only a single scrap tire pile of 2500 square feet remains;

    b. Mosquito control shall be maintained throughout the entire removal period;

    c. All non-auto solid waste shall be removed from the Property no later than July 15, 2008;

    d. Receipts shall be kept for both the tire removal and the non-auto solid waste removal and shall be provided to Geauga County upon request;

    e. Quarterly progress reports shall be provided to Geauga County;

    f. Full access for inspection of the Property shall be provided to Geauga County at all reasonable times;

    g. Upon completion of all waste removal Respondents Antoun and Douaihy shall ask Geauga County for a final inspection and request that Geauga County issue a letter confirming the abatement of the violations at the Property.

23. Ohio EPA, Geauga County, and the Geauga County Sheriff's office conducted an inspection of the Property on April 3, 2008. In correspondence dated May 15, 2008, Geauga County informed Respondent Antoun that due to the failure to remove scrap tires from the Property and the additional waste present on the Property, they were in violation of ORC Section 3734.03 for open dumping of

solid waste. In correspondence dated July 29 2008, Ohio EPA notified Respondent Antoun of the following violations:

a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste, specifically, plastic debris, several piles of a brown unknown waste, approximately 8,000 scrap tires, plastic buckets, piles of soils comingled with metal, plastic and glass fragments, a mattress, pieces of foam, empty drums and plastic containers, pressurized gas cylinders and various other unidentifiable mixed debris;

b. OAC Rule 3745-400-04(B) for illegal disposal of Cⅅ

c. ORC Section 6111.05(A) and OAC Rule 3745-1-04 for causing pollution to waters of the State. Specifically, oil and other unknown fluids were observed draining from the concrete pad at the Property that contained the metal torch equipment. The liquids were flowing from the concrete pad area, down the gravel road and then spreading out toward the drainage ditch to the north and the creek to the southeast of the Property;

d. ORC Sections 3734.05(A)(1), 3734.05(A)(2), 3734.02(C), and OAC Rule 3745-37-01(A) for operating a solid waste facility without obtaining the appropriate licenses and permits.

24. On April 18, 2008, and April 22, 2008, Ohio EPA received anonymous complaints alleging, in part, the following: A large amount of tires are present on the back of the Property; every two to three weeks during the summer there has been black smoke coming from the Property due to burning of insulation from wires and the burning of other rubber parts. Engine oil and other liquids are being dumped on the ground.

25. Via correspondence dated May 15, 2008, Geauga County summoned Respondent Antoun to appear before the Geauga County Board of Health for a hearing on June 16, 2008 to discuss the ongoing violations at the Property. Respondent Antoun failed to appear at the hearing before the Geauga County Board of Health and was subsequently notified via correspondence from Geauga County dated July 23, 2008, that all non-scrap tire solid waste must be removed from the Property within 21 days of receipt of the correspondence and that scrap tires shall be removed from the property at a rate of 1000 scrap tires per month.

26. On August 14, 2008 representatives of Geauga County and the Geauga County Sheriff's office met with Respondent Antoun. During the meeting Respondent Antoun indicated that he currently owes back taxes on the Property and that the

Geauga County Auditor's office would sell the Property at a Sherriff's auction if he did not pay the back taxes. Respondent Antoun further stated that the Property being sold at the Sheriff's auction is acceptable to him because then both his name and his partner's name would be removed from the Property and the new owners would be responsible for the cleanup. Additionally, Respondent Antoun indicated that he no longer wants to be involved with the Property, will no longer be working at the Property, and will not be responsible for any further activities at the Property.

27. Ohio EPA, Geauga County, and the Geauga County Sheriff's office conducted an inspection of the Property on April 6, 2009. In correspondence dated June 8, 2009, Geauga County informed Respondent Antoun of the following violations:

    a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste; and

    b. OAC Rule 3745-400-04(B) for illegal disposal of C&DD.

28. Ohio EPA, Geauga County, and the Geauga County Sheriff's office conducted an inspection of the Property on April 12, 2010. In correspondence dated April 30, 2010, Ohio EPA notified Respondents Antoun and Douaihy of the following violations:

    a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste, specifically, plastic debris, several piles of a brown unknown waste, approximately 8,000 scrap tires, plastic buckets, piles of soils comingled with metal, plastic and glass fragments, a mattress, pieces of foam, empty drums and plastic containers, pressurized gas cylinders and various other unidentifiable mixed debris; and

    b. OAC Rule 3745-400-04(B) for illegal disposal of C&DD.

29. On May 5, 2011, Ohio EPA issued an Invitation to Negotiate ("ITN") Directors Final Findings and Orders to Respondents. The ITNs for both Respondents were unclaimed and returned to Ohio EPA.

30. To date, conditions at the Property remain unchanged and Respondents continue to be in violation of Ohio's solid waste and C&DD laws.

31. Respondents are responsible for the open dumping that has occurred at the Property or allowed open dumping to occur. In addition, Respondents conducted

or allowed the illegal disposal of construction and demolition debris at the Property.

32. 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.

33. Given the possibility for mosquito species carrying West Nile Virus at the Property, the Director has determined that the accumulation of scrap tires on the Property constitutes a danger to the public health or safety or to the environment.

34. Based on Ohio EPA's investigations and interviews with representatives of the Geauga County Health Department and the Geauga County Sheriff's Office, Ohio EPA has determined that Respondents are responsible for the accumulation of scrap tires on the Property.

35. ORC Section 3734.85 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, he 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."

V. ORDERS

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

1. 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 Respondents, Respondents shall use their best efforts to secure from such persons access for Respondents and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondents shall be provided to Ohio EPA upon request. If any access required to implement these Orders is not obtained within 14 days after the effective date of these Orders, or 14 days after the date Ohio EPA notifies Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify Ohio EPA in

writing of the steps Respondents have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access.

2. Upon obtaining access to the Property, Respondents shall implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(B)(8). Respondents shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(B)(10) to Ohio EPA not later than ten (10) days after each application of the registered pesticide, larvicide, or adulticide.

3. Not later than thirty (30) days after obtaining access to the Property, Respondents shall begin the removal of all scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires, by removing two thousand (2,000) scrap tires within thirty days after the effective date of these Orders and removing two thousand (2,000) scrap tires every thirty (30) days thereafter, until all scrap tires are removed from the Property. Upon obtaining access to the Property, Respondents shall arrange for scrap tire transportation by a registered transporter, to a scrap tire storage, monocell, monofill, or recovery facility licensed under ORC Section 3734.81, 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.

4. Respondents shall obtain receipts from the registered transporter and the facility, indicating the weight, volume, and number of scrap tires received. Respondents shall forward such documentation to Ohio EPA and Geauga County Health District not later than ten (10) days after completion of Order #3, above.

5. Not later than one hundred and twenty (120) days after the effective date of these Orders Respondents shall remove and properly dispose of all non-scrap tire solid waste on the Property at a licensed solid waste facility and all construction and demolition debris at either a licensed construction and demolition debris facility or a licensed solid waste facility. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access to the Property.

6. Respondents shall submit monthly progress reports until all scrap tires, other solid wastes, and construction and demolition debris are removed from the Property. Respondents' monthly progress reports, due to Ohio EPA by the 10th day of each month, shall summarize Respondents' efforts to comply with the requirements of these Orders. The first progress report shall be delivered to Ohio EPA no later than the 10th day of the month during which Respondents obtain access to the Property.

VI. TERMINATION

Respondents obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all of Respondents' obligations under these Orders and the Chief of Ohio EPA's Division of Materials and 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 Respondents of the obligations that have not been performed, in which case Respondents 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 to Ohio EPA by the Respondent seeking termination in accordance with this section and shall be signed by that 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 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 Respondents.

VIII. NOTICE

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

Ohio Environmental Protection Agency
Northeast District Office
Division of Materials and Waste Management
2110 East Aurora Road
Ashtabula, Ohio 4405-2450
Attn: Unit Supervisor, DMWM

And to:

Geauga County Health District
470 Center Street, Building 8
Chardon, Ohio 44024-0208
Attn: Health Commissioner

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

X. 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 Respondents 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 Respondents to perform additional activities pursuant to ORC Chapter 3734, 3714. or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XI. EFFECTIVE DATE

The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

ORDERED:

Ohio Environmental Protection Agency

Scott J. Nally
Director

4/3/12
Date