Ohio Environmental Protection Agency
John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

June 27, 2012

RE: SCRAP TIRE STORAGE
NOTICE OF VIOLATION
SO FRESH USED AUTO SALES, LLC

Mr. Charlie Harris
Ms. Jacqueline Harris
So Fresh Used Auto Sales, LLC
436 Wellington Avenue
Akron, Ohio 44305

CERTIFIED MAIL 7009 1680 0000 6381 2913

Mr. Charlie Harris
Ms. Jacqueline Harris
So Fresh Used Auto Sales, LLC
2147 Stabler Road
Akron, Ohio 44313

CERTIFIED MAIL 7009 1680 0000 6381 2920

Dear Mr. and Ms. Harris:

This letter provides a chronology of recent events and a notice of violations identified by Ohio Environmental Protection Agency (Ohio EPA) regarding your business at So Fresh Used Auto Sales, LLC. Additional violations may also be occurring with respect to Harris & Associates, your scrap tire transporter business, which will be addressed in a separate notice of violation. This letter is regarding:

- So Fresh Used Auto Sales, LLC is located at 436 Wellington Avenue, Akron, Ohio (Wellington site). Charlie Harris is the property owner. The business owner is Jacqueline C. Harris.

Ohio EPA received a complaint that there were hundreds of scrap tires in the back yard of the Wellington site. On June 6, 2012, Julie Brown, representing Summit County Public Health (SCPH) and I, representing Ohio EPA, attempted to inspect the Wellington site. However, Ms. Brown and I were denied access. Charlie Harris advised us to obtain a search warrant. At that time, Mr. Harris also stated that the tires in the back yard remain at the site for not more than thirty (30) days.

On June 12, 2012, Lynn Sowers and I, representing Ohio EPA, returned to So Fresh Used Auto Sales, LLC at the Wellington site to do an inspection in accordance with Ohio Revised Code (ORC) Section 3734.07(C). Charlie Harris, the owner, and Mr. Aaron Bane, identified as the Sales Manager, were present at that time. Mr. Harris agreed to allow us to conduct a limited inspection of the Wellington site but said that no photographs could be taken. During our visit, Mr. Harris also limited the amount of time we could spend viewing the Wellington site because he stated he had an appointment to attend.

Ohio EPA looked at the back yard and inside three of the seven semi-trailers on the Wellington site. Another semi-trailer located across the street was not inspected at this time. We asked to see the scrap tire shipping papers but Mr. Harris stated the shipping papers were not located on site. Mr. Harris also said there were no mosquito control records and that he sprayed motor oil on the water in the scrap tires as a way of controlling mosquitos.

Ohio EPA estimates that there were at least 2,000 scrap tires at the Wellington site based on the number of visible tires in several open containers and stacks and piles of scrap tires. In addition, it is unknown how many more tires were in the uninspected trailers and containers on the Wellington site as well as the trailer located across the street.

Mr. Harris said that the Wellington site is a used car and scrap tire retailer and is a separate business from the Harris & Associates scrap tire transporter business located at 103 North Case Avenue, Akron (Case site).

VIOLATIONS

Wellington Site

1. There were vehicles and some scrap tire stacks and piles blocking the entrance gate to the back yard.

   Ohio Administrative Code (OAC) 3745-27-60(B)(7)(e) states in part, *"The following requirements apply to storage of scrap tires outside of portable containers, trucks, semi-trailers, a building or covered structure . . . 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."*

   The Wellington site is in violation of OAC 3745-27-60(B)(7)(e) for not maintaining a fire break through in the middle of the back yard tire storage area. To achieve compliance, you must maintain a fire break area extending from the gate in the fence and back (west) to the middle of the fenced area.

2. There were several hundred scrap tires stored outdoors in stacks and in piles. Mr. Harris said that motor oil was sprayed on the water in the tires and there were no mosquito control records.

   OAC 3745-27-60(C) states in part, *"Anyone storing scrap tires shall maintain mosquito control as follows:*

   (1) One or more of the following shall be done to control mosquitoes:

(a) *Remove liquids from scrap tires within twenty-four hours of accepting the scrap tires.*

(b) *Store scrap tires such that water does not accumulate in scrap tires or containers. Tires shall be kept free of water at all times.*

(c) *Within twenty-four hours of accepting scrap tires containing liquid, arrange for the application of a pesticide or larvicide, which is registered for use as mosquito control by the Ohio department of agriculture."*

(2) *Maintain mosquito control 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.*

(3) *Maintain mosquito control records at the premises indicating the name, type, amount used per tire, and EPA registration number of the pesticide or larvicide, the date and time of the application, and the name of the person who applied the pesticide or larvicide. The property owner or the owner or operator of the premises shall make the mosquito control records available for inspection by the director or the health commissioner during normal operating hours. The owner or operator shall retain copies of mosquito control records for a minimum period of three years."*

The Wellington site is in violation of OAC 3745-27-60(C) for not using an approved pesticide or larvicide and not keeping records of application. To achieve compliance, the Wellington site must treat the outdoor tires with an approved pesticide or larvicide or remove all water in the tires and suitably cover the tires to prevent water from accumulating in them. If applying a pesticide or larvicide, please retain a copy of the records for inspection by Ohio EPA or SCPH. A copy of Ohio EPA Guidance Document 646 titled, "Mosquito Control and Storage of Scrap Tires" is attached for your convenience. Water removed from the tires that has motor oil applied to it needs to be properly disposed.

3. The scrap tire shipping papers were requested to be reviewed as part of the inspection. However, Mr. Harris indicated that all of the scrap tire shipping papers are stored in a separate office at another location.

OAC 3745-27-57(E) states in part, *"All scrap tire generators, scrap tire facilities, scrap tire transporters, and any other facilities that generate or accept scrap tires shall retain a copy of completed shipping papers for a minimum of three years. All shipping papers shall be*

retained at the principal place of business and shall be available for inspection during normal business hours by Ohio EPA or the local health department. The three-year period for retention shall start from the date the shipping paper was completed. Record retention periods shall be extended during the course of any unresolved litigation, or when a specific written request is made by Ohio EPA or the local health department, or as required by a court or administrative order."

The Wellington site is in violation of OAC 3745-27-57(E) for not having the scrap tire shipping papers at the Wellington site. To achieve compliance, the scrap tire shipping papers at the Wellington site must be kept for at least three years. The shipping papers must account for all scrap tires on site. The shipping papers must be in order and available for inspection during normal business hours.

4. Scrap tires were piled against the north side of your building.

   OAC 3745-27-60(B)(7)(c) states in part, *"The following requirements apply to storage of scrap tires outside of portable containers, trucks, semi-trailers, a building or covered structure . . . Scrap tire storage piles of five hundred tires or less shall be at least twenty-five feet away from all buildings and other scrap tire storage piles."*

   The Wellington site is in violation of OAC 3745-27-60(B)(7)(c) for having scrap tires piled up against the building. To achieve compliance, any outdoor storage of a pile of less than 500 scrap tires must be kept at least 25 feet away from your building and all other scrap tire storage piles.

5. Scrap tires were in three semi-trailers close together near the southwest corner of the site. Mr. Harris opened these trailers for Ohio EPA inspection. Scrap tires were inside the semi-trailers. The semi-trailers were approximately 30 to 40 feet away from a building on the neighboring south property that is not owned or a part of the So Fresh Used Auto Sales, LCC business location. Also, the semi-trailers, other box containers, vehicles and scrap tire piles were positioned so close together that semi-trailers and portable containers could not be moved without moving other trailers, containers, vehicles and tire piles.

   OAC 3745-27-60(B)(4) states in part, *"Where multiple portable containers, trucks, or semi-trailers are used to store scrap tires, the portable scrap tire containers, trucks, or semi-trailers shall be separated from the following:*

   (a) Buildings and structures that are owned or leased by the person storing the scrap tires by at least fifteen feet.

(b) Other buildings or structures not owned or leased by the person storing the scrap tires by at least:

(i) Fifty-six feet of separation if semi-trailers or other portable containers that have a volume of more than fifty-one cubic yards are used for scrap tire storage. Semi-trailers shall have enclosed sides, top, and doors such that the semi-trailer is capable of keeping the contents dry. Up to a maximum of ten semi-trailers or portable containers may be located adjacent to each other and the fifty-six feet of separation shall apply to all sides of the group of semi-trailers or portable containers. All semi-trailers and portable containers shall be positioned such that any semi-trailer or portable container can be moved without moving any other semi-trailer, or container.

(ii) Twenty-five feet of separation if roll-off containers or box vans are used as portable containers for scrap tire storage. The roll-off containers and box vans shall each contain five hundred or less scrap tires or shall have a volume of fifty-one cubic yards or less and shall be capable of keeping the contents dry. Up to a maximum of ten portable containers may be located adjacent to each other and the twenty-five feet of separation shall apply to all sides of the group of containers. All containers shall be positioned such that any container can be moved without moving any other container."

The Wellington site is in violation of OAC 3745-27-60(B)(4)(b)(i) for having semi-trailers containing scrap tires within 56 feet of a building that is not owned or leased by the business storing the scrap tires. To achieve compliance, the semi-trailers must be relocated so that there is at least 56 feet between the semi-trailers containing scrap tires and the buildings on the adjacent properties that are not owned by So Fresh Used Auto Sales, LLC.

The Wellington site is in violation of OAC 3745-27-60(B)(4)(b)(i) for not keeping all semi-trailers and portable containers positioned such that any semi-trailer or portable container can be moved without moving any other semi-trailer, or container. To achieve compliance, you must arrange the semi-trailers, storage boxes, vehicles and scrap tire piles so that all containers are positioned such that any container can be moved without moving any other container.

The Wellington site is in violation of OAC 3745-27-60(B)(4)(b)(i) because the doors on two semi-trailers were damaged and appeared not able to be closed. These two trailers were full of tires, had open doors, and were located close to the southwest corner of the So Fresh Used Auto Sales building. To achieve compliance, all trailers and containers

must be fully repaired so that the doors close properly and there are no leaks to allow rain water to enter the scrap tires.

Comments

1. Mr. Harris said the Wellington site is a scrap tire retailer and is a separate business from Harris & Associates, the scrap tire transporter business located nearby at 103 North Case Avenue, Akron. However, Mr. Harris indicated that the origin of the Wellington site scrap tires was from Harris & Associates. No shipping papers were produced to verify this statement.

   During past inspections, Ohio EPA has observed either one or two semi-trailers at the Case site, a parcel that is approximately 60 feet by 130 feet. Compare this with the Wellington site that had seven semi-trailers, other boxes containing scrap tires, and several outdoor scrap tire piles. The Wellington site is a larger location, at approximately 200 feet by 200 feet. It appears that a significant portion of your scrap tire transporter business, including tire sorting and storage, is actually occurring at the Wellington site without proper authorization in the Harris & Associates 2012 scrap tire transporter registration certificate.

   The Wellington site cannot be used as a scrap tire sorting/storage area for the Harris & Associates scrap tire transporter business unless the Wellington site is identified in the approved scrap tire transporter registration application. Harris & Associates did not identify the Wellington site in the 2012 scrap tire transporter application.

   Before Harris & Associates is authorized to sort scrap tires and store the transporter semi-trailers at the Wellington site, Harris & Associates must submit a revised 2012 scrap tire transporter application and include the Wellington site information. Also, the Wellington site must correct all violations before Ohio EPA can amend the Harris & Associates scrap tire transporter certificate. This will also require compliance with OAC 3745-27-56, standards for transporters of scrap tires.

2. In order to verify your status as a scrap tire retailer, Ohio EPA requests a copy of your vendor license issued by Ohio Department of Taxation.

3. Charlie Harris denied Ohio EPA, SCPH and the Akron Fire Department, access to the Wellington site on June 6, 2012. Mr. Harris only granted limited access to Ohio EPA dated June 12, 2012. Ohio EPA sent Charlie and Jacqueline Harris a letter dated June 11, 2012, explaining that Ohio EPA can obtain a search warrant if needed and then may seek cost recovery for legal expenses from So Fresh Used

Auto Sales and its responsible owners in accordance with Ohio Revised Code (ORC) 3734.07(D). Cost recovery may be in excess of $1,000.00. Please consider this regarding future authorized inspections. Be advised that Ohio EPA intends to inspect this site again within thirty days to determine if So Fresh Used Auto Sales has corrected the violations observed on June 6 and June 12, 2012 and come into compliance with the scrap tire storage and handling rules as in OAC 3745-27-60.

Please provide a written response to Ohio EPA within 14 days of receipt of this Notice of Violations.

Nothing in this Notice of Violations shall be construed to authorize any waiver from the requirements of any applicable state or federal laws or regulations. This Notice of Violations shall not be interpreted to release So Fresh Used Auto Sales, LLC, Charlie and Jacqueline Harris and/or Harris & Associates, individually or collectively, from their 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.

Should you have any questions, please call me at (330) 963-1286.

Sincerely,

Dave Dysle

Dave Dysle
Environmental Specialist
Division of Materials and Waste Management

DD/cl

Attachment: Ohio EPA Guidance, "Mosquito Control and Storage of Scrap Tires"

cc: Aaron Shear, DMWM, CO
Julie Brown, Summit County Public Health
Ed Jetter, Lieutenant, Akron Fire Department
File: [Sowers/TIRE/Harris & Associates/COR/77]