

**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

February 1, 2011

Mr. Logan Medley
19583 State Route 31
Mt. Victory, Ohio 43340

Re: Director's Final Findings & Orders

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

You are hereby notified that this action of the Director of Environmental Protection (Director) is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Treasurer, State of Ohio." The Commission, in its discretion, may reduce the fee if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, Ohio 43215

Sincerely,

Kimberly Reese
Systems Management Unit
Division of Solid & Infectious Waste Management

Enclosure: Director's Final Findings and Orders

cc: Kelly Jeter, CO, DSIWM
Jeff Hurdley, CO, Legal
Mike Reiser, NWDO, DSIWM





waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27 and 3745-37.

4. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and in the definition of "solid waste" under OAC Rule 3745-27-01(S)(23).
5. OAC Rule 3745-27-01(S)(6) states, " 'Scrap tire' is a type of solid waste and means any unwanted or discarded tire, regardless of size, that has been removed from its original use."
6. OAC Rule 3745-27-01(B)(1) states, " 'Beneficial use' means to use a scrap tire in a manner that results in a commodity for sale or exchange or in any other manner authorized as a beneficial use in accordance with rule 3745-27-78 of the Administrative Code."
7. OAC Rule 3745-27-78(F) requires, in part, that a person proposing to beneficially use scrap tires in a manner that is not specifically authorized in paragraph (D) or (E) of OAC Rule 3745-27-78 submit a project plan to the Director for approval.
8. Respondent submitted a beneficial use project plan pursuant to OAC Rule 3745-27-78(F). Ohio EPA received Respondent's project plan on August 2, 2007.
9. On September 20, 2007, pursuant to OAC Rule 3745-27-78(F), the Director approved Respondent's project plan to beneficially use scrap tires at the Site (Project #33-STBU-7239) ("2007 Approval").
10. OAC Rule 3745-27-78(H)(1) states, in pertinent part, after project plan approval, the applicant shall "comply with the project plan as submitted to and approved by the director."
11. OAC Rule 3745-27-78(H)(2) states, in pertinent part, after project plan approval, the applicant shall "comply with the mosquito control requirements of paragraph (D)(3) of this rule while the scrap tires are in storage and in use." Paragraph (D)(3) of this rule states, in pertinent part, that the applicant "shall meet the requirements of rule 3745-27-60 of the Administrative Code including but not limited to mosquito control(.)"
12. Condition Number 4 of the 2007 Approval states, "All scrap tires not in use shall be stored in compliance with OAC Rule 3745-27-60(B), as effective March 29, 2002."
13. OAC Rule 3745-27-60(B), as effective March 29, 2002, states, in pertinent part, "One or more of the following shall be done to control mosquitoes at the premises: (a) remove liquids from scrap tires and immediately store scrap tires such that water does not accumulate in scrap tires; (b) apply or arrange for the application of a pesticide or larvicide."



14. Condition Number 5 of the 2007 Approval states, "The fence shall be covered with cement as soon as an entire truckload of cement is able to be used."
15. Condition Number 11 of the 2007 Approval states, "The house, horse barn, and fence built with scrap tires shall be maintained such that tires are not exposed due to concrete flaking off or a partial collapse of the fence or structure. If the scrap tires become exposed, repairs shall be made to eliminate the exposure or the fence or structure shall be removed and the scrap tires shall be managed in accordance with Condition Number 8" above. Condition Number 8 of the 2007 Approval states, "If the scrap tires are excavated or otherwise removed from the approved beneficial use area, they shall be disposed of as solid waste at an approved solid waste disposal facility."
16. During Site visits on June 26, 2008, July 15, 2008, August 11, 2008, September 8, 2008, February 14, 2009, and March 5, 2009, and during documented inspections conducted on March 27, 2009, May 6, 2009, July 1, 2009 and June 10, 2010 Ohio EPA identified numerous deviations from the 2007 Approval. Inspections were documented in Notices of Violation dated April 10, 2009, May 18, 2009, July 20, 2009 and July 13, 2010.
17. Respondent has not complied with the 2007 Approval. Therefore, Respondent has violated OAC Rule 3745-27-78(H)(1).
18. Respondent has violated OAC Rule 3745-27-78(H)(2), Condition Number 4 of the 2007 Approval, and OAC Rule 3745-27-60(B) by failing to comply with mosquito control requirements.
19. Respondent has violated Condition Number 5 of the 2007 Approval, by failing to cover the scrap tire fence with cement as soon as an entire truckload of cement was able to be used.
20. Respondent has violated Condition Number 11 of the 2007 Approval, by failing to maintain the tire fence such that scrap tires are not exposed, by failing to repair the fence when scrap tires became exposed, by failing to remove the fence when repair was not completed, and by failing to manage the scrap tires comprising the fence in accordance with Condition Number 8 of the 2007 Approval.
21. 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.
22. 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, the director 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. If the person responsible for causing the accumulation of scrap tires is a person different from the owner of the land on which the accumulation is located, the director may issue such an order to the landowner."

23. ORC Section 3734.85 further provides, "If a person to whom a removal order is issued under this division fails to comply with the order and if the director performs a removal action under this section, the person to whom the removal order is issued is liable to the director for the costs incurred by the director for conducting the removal operation, storage at a scrap tire storage facility, storage or disposal at a scrap tire monocell or monofill facility, or processing of the scrap tires so removed, the transportation of the scrap tires from the site of the accumulation to the scrap tire storage, monocell, monofill, or recovery facility where the scrap tires were stored, disposed of, or processed, and the administrative and legal expenses incurred by the director in connection with the removal operation."
24. By letter dated July 19, 2010, the Director offered Respondent the opportunity to negotiate a consensual agreement regarding the timely and proper removal of the scrap tires from the Property. The Director's proposal was sent certified mail to two separate addresses believed to be locations Respondent receives mail: 19583 State Route 31, Mt. Victory, Ohio (Property) and 2445 Green Camp Road, Marion, Ohio.
25. On July 20, 2010, Jeremy Scoles, from the Northwest District Office of Ohio EPA, hand delivered a copy of the certified letter with proposed consensual agreement to the 2445 Green Camp Road, Marion, Ohio address, and a person who identified himself as the Respondent's father took the copy of the certified letter.
26. On August 30, 2010, Ohio EPA received both of the Director's offers identified in Finding Number 24 returned unclaimed but identified a forwarding address of 2445 Green Camp River Road, Marion, Ohio.
27. As a result of the Respondent's lack of response to negotiate and comply with the 2007 Approval and Ohio's Scrap Tire regulations, the Director issued a proposed action on November 29, 2010 revoking the 2007 Approval which requires the complete removal and proper disposal of the scrap tires from the Property.
28. The proposed action was sent certified and received on December 14, 2010 at the forwarding address identified in Finding #26. The name of the individual who signed the signature of receipt was "Bill Medley."
29. The Respondent chose not to appeal the Director's revocation identified in Finding #27; therefore, the Director's proposed action resulted in a final action dated January 6, 2011 which the Respondent chose not to appeal as well.



30. To date, Respondent has failed to remove the scrap tires from the Property, in violation of the Director's prior final action dated January 6, 2011 and ORC Sections 3734.13 and 3734.85.

V. ORDERS

1. 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)(1) and (2). Respondent shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3) to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.
2. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause 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, and shall arrange for their transportation, by a registered scrap tire transporter:
 - a. to a scrap tire storage, monofill, monocell, or recovery facility licensed under ORC Section 3734.81; or
 - b. to such a facility in another state operating in compliance with the laws of that state in which it is located; or
 - c. to any other solid waste disposal facility in another state that is operating in compliance with the laws of that state.
3. Respondent shall obtain receipts from the registered transporter and the facility, indicating weight, volume or number of scrap tires received. Respondent shall forward all such documentation and receipts for transportation and disposal to Ohio EPA-Northwest District Office within ten (10) days after completion of Order No. 2.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Solid and Infectious 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 Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation from Respondent: "I certify that the information contained in or accompanying this certification is true, accurate and complete."



This certification shall be submitted by Respondent to Ohio EPA and shall be signed by 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 Respondent.

VIII. NOTICE

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

Ohio Environmental Protection Agency
Northwest District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
347 North Dunbridge Road
Bowling Green, Ohio 43402

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

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

X. EFFECTIVE DATE

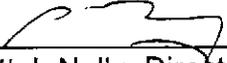
The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.



Director's Final Findings and Orders
Mr. Logan F. Medley
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IT IS SO ORDERED:

Ohio Environmental Protection Agency



Scott J. Nally, Director

