OhioEPA

State of Ohio Environmental Protection Agency

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May 16, 2007

Linda L. Conrad 7006 0810 0002 0010 9284
205 Pontius Lane
Circleville, OH 43113

Richard Smith
14652 Bearfield Rd 201 NE 7006 0810 0002 0010 9291
Corning, OH 43730

37 Auto Parts
10637 Purvis Rd 7006 0810 0002 0010 9192
Breman, OH 43105

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. It must be filed with the Appeals Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of $70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate 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 at the following address:

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

Sincerely,

Brian Dearth
Systems Management Unit
Division of Solid & Infectious Waste Management

Enclosure: Director's Final Findings and Orders

cc: Ed Gortner, CO, DSIWM
Marty Cooper, CO, Legal
Heidi Griesmer, PIC
Jennifer Valentine, Fairfield Co. HD
Jeff Hurdley, CO, Legal
Duane Snyder, CDO, DSIWM
Bob Large, CO, DSIWM

OHIO E.P.A.

MAY 16 2007

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Linda L. Conrad 205 Pontius Lane Circleville, Ohio 43113	:	Director's Final Findings and Orders
Richard Smith 14652 Bearfield Road 201 NE Corning, Ohio 43730	:	
37 Auto Parts 10637 Purvis Road Bremen, Ohio 43105	:	

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: [signature] Date: 5-16-07

Respondents

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Linda L. Conrad, Richard Smith, and 37 Auto Parts (collectively the "Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") sections 3734.13 and 3734.85.

II. PARTIES BOUND

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

III. DEFINITIONS

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

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent Linda L. Conrad is the owner of a parcel of land, located at 10637 Purvis Road, Bremen, Fairfield County, Ohio which is identified in Deed Record Volume 335, page 617, in the Fairfield County Recorder's Official Records dated

May 1, 1995 (the "Property"). The Property is further identified as Fairfield County Auditor parcel number 0340022700.

2. 37 Auto Parts is an unlicensed motor vehicle salvage business[1] and an unlicensed junkyard[2] located on the Property. Furthermore, the Ohio Secretary of State cancelled 37 Auto Parts Articles of Incorporation on February 20, 1999.

3. Richard Smith is the sole owner and operator of 37 Auto Parts and is purchasing the Property through a land contract. The land contract is recorded in Volume 765, page 614 of the Fairfield County Recorder's Mortgage Records, dated August 3, 1994.

4. Respondents are each a "person" as that term is defined in ORC Section 3734.01 and Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).

5. There are currently an estimated 7,000 scrap tires illegally disposed of on the Property.

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

7. OAC Rule 3745-27-01(S)(6) defines "scrap tire" as "a type of solid waste and means any unwanted or discarded tire, regardless of size, that has been removed from its original use."

8. Scrap tires are included in the definition of "solid waste" under OAC Rule 3745-27-01(S)(24).

9. The open dumping of scrap tires is a violation of ORC § 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 . . . 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."

10. 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

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[1] 37 Auto Parts was formerly a licensed motor vehicle salvage dealer, but the license expired on July 31, 2005.

[2] 37 Auto Parts was formerly a licensed junkyard, but the license expired in 2004.

(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."

11. 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) - (8).

12. 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.

13. On March 20, 2006, the Fairfield County Department of Health ("FCDH") issued Board Orders that required Richard Smith, as owner and operator of 37 Auto Parts, to do the following:
    a. Immediately implement mosquito control measures in accordance with OAC Rule 3745-27-60(B) ("Board Order No. 1").
    b. Establish scrap tire storage piles within 30 days ("Board Order No. 2").
    c. Begin scrap tire removal operations within 30 days and continue to remove at least 1000 scrap tires every 30 days until all the scrap tires are removed ("Board Order No. 3").
    d. Use a registered scrap tire transporter to remove the scrap tires ("Board Order No. 4").
    e. Obtain receipts from the registered scrap tire transporter and forward them to FCDH within 10 days after completion of Board Order No. 3 ("Board Order No. 5").
    f. Submit monthly scrap tire removal progress reports to FCDH ("Board Order No. 6").
    g. Comply with Board Orders Nos. 1 and 2 until all scrap tires are removed ("Board Order No. 7").
    h. Take steps to prevent further open dumping of scrap tires ("Board Order No. 8").

14. On July 20, 2006, FCDH conducted an inspection of the Property and observed the following violations:
    a. Smith's failure to comply with the March 20, 2006 Board Order No. 1.
    b. Smith's failure to comply with the March 20, 2006 Board Order No. 2.
    c. Smith's failure to comply with the March 20, 2006 Board Order No. 3.
    d. Smith's failure to comply with the March 20, 2006 Board Order No. 6.

    This inspection was documented in a Notice of Violation ("NOV") letter from FCDH to Richard Smith dated November July 25, 2006.

15. On August 31, 2006, the FCDH issued Board Orders that required Linda Conrad, owner of the Property, to do the following:
    a. Immediately implement mosquito control measures in accordance with OAC Rule 3745-27-60(B) ("Board Order No. 1").

b. Establish scrap tire storage piles within 30 days ("Board Order No. 2").
c. Begin scrap tire removal operations within 30 days and continue to remove at least 1000 scrap tires every 30 days until all the scrap tires are removed ("Board Order No. 3").
d. Use a registered scrap tire transporter to remove the scrap tires ("Board Order No. 4").
e. Obtain receipts from the registered scrap tire transporter and forward them to FCDH within 10 days after completion of Board Order No. 3 ("Board Order No. 5").
f. Submit monthly scrap tire removal progress reports to FCDH ("Board Order No. 6").
g. Comply with Board Orders Nos. 1 and 2 until all scrap tires are removed ("Board Order No. 7").
h. Take steps to prevent further open dumping of scrap tires ("Board Order No. 8").

16. On October 12, 2006, Ohio EPA and FCDH conducted a joint inspection of the Property and observed the following violations:
    a. Smith's failure to comply with the March 20, 2006 Board Order No. 1.
    b. Smith's failure to comply with the March 20, 2006 Board Order No. 2.
    c. Smith's failure to comply with the March 20, 2006 Board Order No. 3.

    This inspection was documented in an NOV from FCDH to Richard Smith dated October 17, 2006.

17. On October 12, 2006, Ohio EPA and FCDH conducted a joint inspection of the Property and observed the following violations:
    a. Conrad's failure to comply with the August 31, 2006 Board Order No. 1.
    b. Conrad's failure to comply with the August 31, 2006 Board Order No. 2.
    c. Conrad's failure to comply with the August 31, 2006 Board Order No. 3.
    d. Conrad's failure to comply with the August 31, 2006 Board Order No. 6.

    This inspection was documented in an NOV from FCDH to Linda Conrad dated October 17, 2006.

18. On January 4, 2007, Ohio EPA and FCDH conducted a joint inspection of the Property and observed the following violations:
    a. OAC Rule 3745-27-60(B)(6)(a) for failure to have scrap tire piles less than 2500 square feet in basal area.
    b. OAC Rule 3745-27-60(B)(6)(e) for failure to keep fire lanes free of combustible material.
    c. OAC Rule 3745-27-60(B)(6)(f) for failure to keep fire lanes maintained to allow emergency vehicle access.
    d. OAC Rule 3745-27-60(B)(8) for failure to perform mosquito control measures.

    This inspection was documented in two separate NOV's from Ohio EPA to Linda Conrad and Richard Smith, both dated January 9, 2007.

19. Given the proximity of Respondents' scrap tire pile to the Village of Breman and sensitive sub populations such as elementary schools, a middle school, a junior high and a high school, and the potential that a tire fire could obscure major transportation routes such as State Routes 37 and 664, and in consideration that the effects of a tire fire could adversely impact Rush Creek and other waters of the state, the Director has determined that the unlawful accumulation of scrap tires on the Property constitutes a danger to the public health or safety or to the environment.

20. 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. 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."

21. ORC Section 3734.85 further provides, "...[i]f the Director removes the scrap tires from the Property, Respondent shall reimburse the Director, within thirty (30) days after written request, for the costs incurred by the Director for conducting the removal operation, storing at a scrap tire storage facility, storing or disposing at a scrap tire monocell or monofill facility, processing scrap tires so removed, the transporting of the scrap tires from the Property to the scrap tire storage, monocell, monofill, or recovery facility where the scrap tires were stored, disposed of, or processed, and for the administrative and legal expenses incurred by the Director in connection with the removal operation."

V. ORDERS

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

1. Upon the effective date of these Orders, 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 within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.

2. Not later than thirty (30) days after the effective date of these Orders, Respondents shall establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B)(1) through (6).

3. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of all illegally disposed scrap tires from the Property including, but not limited to, scrap tires dumped on 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.

4. Respondents shall obtain receipts from the registered scrap tire transporter and the facility, indicating weight, volume or number of scrap tires received. Respondents shall forward such documentation to Ohio EPA within ten (10) days after completion of Order No. Three (3).

5. Respondents shall continue to comply with Order Nos. One (1) and Two (2) above until such time as all scrap tires have been removed from 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 obligations under these Orders and Ohio EPA's Division of Solid and Infectious Waste Management Enforcement Coordinator 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 from Respondents : "I (we) certify that the information contained in or accompanying this certification is true, accurate and complete." This certification shall be signed and submitted by Respondent(s) to Ohio EPA.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, Respondents and/or the Property.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents and/or the Property.

IX. NOTICE

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

Ohio Environmental Protection Agency
Central District Office
Division of Solid and Infectious Waste Management
Attn: DSIWM Unit Supervisor
P.O. Box 1049
Columbus, OH 43216-1049

and to:

Fairfield County Health Department
1587 Granville Pike
Lancaster, OH 43130
Attn: Frank Hirsch, 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. 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.

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Chris Korleski, Director