



State of Ohio Environmental Protection Agency

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Columbus, OH 43216-1049

March 1, 2007

Theodore H. Tsesmilles and
Debra L. Tsesmilles
165 E. Main Street
Salineville, OH 43945

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,

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

Enclosure: Director's Final Findings and Orders

cc: Ed Gortner, CO, DSIWM
Eric Adams, NEDO, DSIWM
Jerry Weber, NEDO, DSIWM
Jeff Hurdley, OEPA- Legal

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



BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAR - 1 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

Theodore H. Tsesmilles and
Debra L. Tsesmilles
165 E. Main Street
Salineville, Ohio 43945

Respondents

Director's Final Findings

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

By: 

Date: 3-1-07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Theodore H. Tsesmilles and Debra L. Tsesmilles ("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 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 defined in ORC Chapter 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondents are the owners of six parcels of land identified in the records of the Columbiana County Recorder's office by quit claim deed recorded June 3, 1999, in volume 740, page 787, as permanent parcel numbers 72-00224.000, 72-01102.000, 72-01099, 72-01098.000, 72-01100.000, and 72-01101.000 (the "Property"). The Property is located at 165 East Main Street/Hunter Street, Salineville, Columbiana County, Ohio.
2. Respondents are "person[s]" as that term is defined in ORC Section 3734.01(G) and in Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).



3. An estimated 5,000 to 10,000 scrap tires are illegally disposed at the Property.
4. The Property is neither licensed nor permitted as a scrap tire collection facility or a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27 and 3745-37.
5. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24).
6. 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."
7. 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."
8. 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."
9. 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) - (B)(10).
10. Scrap tires, if not properly managed, may become a breeding ground for mosquitos. Mosquitos are a common disease vector for St. Louis encephalitis, La Crosse encephalitis, Yellow Fever, West Nile Virus and Dengue Fever.
11. Respondents have created or allowed an unpermitted, unlicensed "solid waste disposal facility" and "open dump", as those terms are defined OAC Rules 3745-27-01(S)(25) and (O)(3), respectively, in violation of ORC Sections 3734.03 and 3734.05(A), and OAC Rule 3745-27-05(C).
12. On April 8, 1998, Ohio EPA, Northeast District Office, Division of Solid and Infectious Waste Management ("NEDO-DSIWM") received a call reporting a tire fire that had occurred the previous evening outside of Salineville. NEDO-DSIWM and



the Columbiana County General Health District ("CCGHD") investigated the complaint, and found a large volume of scrap tires on the Property. As CCGHD was an approved health district at the time, NEDO-DSIWM did not send a notice of violation ("NOV") to Respondents.

13. On April 15, 2004, Ohio EPA removed CCGHD from the approved list of health districts.
14. On March 20, 2006, Ohio EPA conducted an inspection of the Property and observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C), open dumping of scrap tires;
 - b. OAC Rule 3745-27-60(B), creating a nuisance, a hazard to public health or safety by failing to implement mosquito control measures in accordance with (B)(8) of this rule.

Ohio EPA documented this inspection in an NOV letter to Respondents dated June 15, 2006.

15. On July 27, 2006, Ohio EPA conducted an inspection of the Property, collected mosquito larvae from scrap tires for identification, and observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C), open dumping of scrap tires; and
 - b. OAC Rule 3745-27-60(B), creating a nuisance, a hazard to public health or safety by: (1) failing to implement mosquito control measures in accordance with (B)(8) of this rule; and (2) failing to apply mosquito adulticide and larvicide in accordance with (B)(9)(a) and (b) of this rule.

Ohio EPA documented this inspection in an NOV letter to Respondents dated July 28, 2006.

16. On December 21, 2006, Ohio EPA conducted an inspection of the Property and observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C), open dumping of scrap tires; and



- b. OAC Rule 3745-27-60(B), creating a nuisance, a hazard to public health or safety by: (1) failing to implement mosquito control measures in accordance with (B)(8) of this rule.

Ohio EPA documented this inspection in an NOV letter to Respondents dated December 21, 2006.

17. On October 25, 2006, Ohio EPA received written notification from the Ohio Department of Health that the mosquito larvae collected on July 27, 2006 had been identified as *Aedes japonicus* and *Culex sp.* Several species of the *Culex* genus and *Aedes japonicus* are capable of spreading West Nile Virus.
18. Given the results of the mosquito identification, the proximity of Respondents' scrap tire pile to the Village of Salineville, its public water supply, fifty-three private drinking water wells, Riley Run, and in consideration of the effects of a second tire fire adversely impacting waters of the state, the Director has determined that the accumulation of scrap tires on Respondents' Property constitutes a danger to the public health or safety or to the environment.
19. 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.
20. ORC Section 3745.85(A) further provides, "[i]f 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[.]"

V. ORDERS

Respondent 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 one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of all scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground, partially buried scrap tires, and 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 which is operating in accordance with ORC Chapter 3734. and the rules adopted thereunder; or
 - b. to a scrap tire storage, monofill, monocell, or recovery facility in another state operating in compliance with the laws of that state; or
 - c. to any other solid waste disposal facility in another state that is operating in accordance with the laws of that state and that is authorized to accept scrap tires for disposal.
3. Respondents shall obtain receipts from the registered transporter and the authorized scrap tire facility or solid waste disposal facility indicating weight, volume or number of scrap tires transported and disposed and shall forward such documentation to Ohio EPA within fourteen (14) days after completion of Order No. 2.
4. Respondents shall continue to comply with Order No. 1, 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 the Enforcement Coordinator 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 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: "We certify that the information contained in or accompanying this certification is true, accurate and complete."

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

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 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 or the Property.

VIII. NOTICE

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

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
2110 East Aurora Road
Twinsburg, OH 44087-1924
Attn: DSIWM Supervisor

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 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.

X. 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

A handwritten signature in cursive script, appearing to read "Chris Korleski", written over a horizontal line.

Chris Korleski
Director

