

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

D&R Recyclers, Inc.	:	Director*s Final
3851 South Street	:	Findings and Orders
Hamilton, Ohio 45011	:	

I. JURISDICTION

These Director’s Final Findings and Orders (“Orders”) are issued to D&R Recyclers, Inc. (“D&R Recyclers”) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) under Ohio Revised Code (“ORC”) Sections 3745.01, 3734.09, and 3734.44.

II. PARTIES BOUND

These Orders shall apply to and be binding upon D&R Recyclers and successors in interest liable under Ohio law. No change in ownership of Respondent, or of the Facility, as hereinafter defined, shall in any way alter D&R Recyclers’ 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 (“Director”) has determined the following findings:

1. D&R Recyclers is the owner and operator of a class II scrap tire recovery facility (“Facility”) located at 3851 South Street in Hamilton, Butler County, Ohio.
2. The Facility consists of approximately 50 acres and contains an estimated 1.0 to 1.5 million scrap tires. D&R Recyclers is responsible for the accumulation of scrap tires at the Facility.

3. Pursuant to ORC Section 3734.13 and 3745.01 D&R Recyclers entered into consensual Director's Final Findings and Orders on March 14, 2001, to address previous operational and permitting violations.
4. Order Number 2(B) of the March 14, 2001, Director's Final Findings and Orders requires D&R Recyclers to remove at least 200,000 scrap tires from the Facility every six months until all of the scrap tires are removed.

During the six-month period from March 2002 to September 2002, D&R Recyclers documented that a total of 67,117.5 tires were removed from the Facility. By letter dated October 25, 2002, Ohio EPA issued a notice of violation to D&R Recyclers for not removing 200,000 scrap tires during the afore mentioned six-month period.

5. Order Number 3(D) of the March 14, 2001, Director's Final Findings and Orders requires D&R Recyclers to, within 90 days, store all scrap tires in piles no greater than 2,500 square feet in basal area. The pile size requirement applies to the baled tire fence surrounding the perimeter of the Facility.

To date, the baled tire fence still remains over most of the Facility's perimeter. By letters dated July 6, 2001; August 8, 2001; October 23, 2001; January 14, 2002; April 5, 2002; May 14, 2002; September 9, 2002; and October 25, 2002, Ohio EPA issued notices of violation to D&R Recyclers for storing scrap tires in piles greater than 2,500 square feet in basal area.

6. Order Number 3(E) of the March 14, 2001, Director's Final Findings and Orders requires D&R Recyclers to, within 90 days, separate all scrap tire storage piles from other scrap tire storage piles and from buildings by fire lanes with a width equal to or greater than 50 feet. The order also requires D&R Recyclers to, within 90 days, separate all scrap tire storage piles from the property line by at least 100 feet.

To date, the baled tire fence surrounding the perimeter of the Facility does not meet the requirement to store the scrap tires at least 100 feet from the property line and also does not meet the requirement to provide 50 foot fire lanes. By letters dated July 6, 2001; August 8, 2001; October 23, 2001; January 14, 2002; April 5, 2002; May 14, 2002; September 9, 2002; and October 25, 2002, Ohio EPA issued notices of violation to D&R Recyclers for not meeting the above setback requirements.

7. On September 16, 2002, Ohio EPA received a 2003 license application from D&R Recyclers for the Facility.
8. Ohio Administrative Code ("OAC") Rule 3745-37-03(A)(3) states:

"The board of health or the director [of the Ohio Environmental Protection Agency], whichever is applicable, shall not issue a solid waste facility license unless ... in the case of a previously or currently operating site or facility, the applicant operated the facility in substantial compliance with all applicable provisions of Chapter 3734 of the Revised Code and with Chapters 3745-27 and 3745-37 of the Administrative Code during the period of effectiveness of the last license held for the facility."
9. ORC Section 3734.09 states:

"The board of health of a health district in which a solid waste facility or an infectious waste treatment facility is located, or the director of environmental protection, may suspend, revoke, or deny a license for the facility for violation of any section of this chapter or any rule adopted under it..."
10. ORC Section 3734.44(D) states:

"Notwithstanding the provisions of any law to the contrary, no permit or license shall be issued or renewed by the director of environmental protection... Unless the director... finds that the applicant has a history of compliance with environmental laws in this state and other jurisdictions and is presently in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, environmental laws in this state and other jurisdictions."
11. The Director is the licensing authority for this Facility.
12. ORC Section 3734.11(A) states:

"no person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code."
13. D&R Recyclers is a "person" as that term is defined in ORC Section 3734.01(G) and OAC Rule 3745-27-01(B)(27).

14. Based upon a review of the information contained in the findings above, D&R Recyclers has violated the March 14, 2001, Director's Final Findings and Orders that were issued under ORC Sections 3734.13 and 3745.01. As a result, D&R Recyclers is not in substantial compliance with the applicable provisions of ORC Section 3734.11(A).

15. OAC Rule 3745-27-15 establishes the financial assurance requirements for scrap tire facilities.

D&R Recyclers has a surety bond with a company that is no longer listed as an acceptable company, and it has not submitted alternate financial assurance. By letter dated November 27, 2002, Ohio EPA notified D&R Recyclers of its non-compliance with the above rule.

16. OAC Rule 3745-27-60(B)(1) states:

"Sufficient drainage shall be maintained such that water does not collect in the area where scrap tires are stored."

Furthermore, Order Number 3(A) of the March 14, 2001, Director's Final Findings and Orders states:

"Respondent shall ... immediately take the necessary steps to prevent the ponding of water in areas where any scrap tires are stored."

Standing water existed in tire piles located along the southwest border of the Facility. By letters dated May 14, 2002, and June 25, 2002, Ohio EPA notified D&R Recyclers of its non-compliance with the above rule and the Director's orders.

17. OAC Rule 3745-27-60(B)(6)(a) states:

"Individual scrap tire storage piles shall be no greater than two thousand five hundred square feet in basal area and the total number of scrap tire shall not exceed the amount specified in paragraph (A) of rule 3745-27-61 of the Administrative Code."

The baled scrap tires located at the perimeter of the Facility (a.k.a. the tire fence) remains at the boundary of most of the Facility. The tire fence and non-baled tire piles along the northwest side of the property have a basal area greater than 2,500 square

feet. By letters dated June 25, 2002; September 9, 2002; and October 25, 2002, Ohio EPA notified D&R Recyclers of its non-compliance with the above rule.

18. OAC Rule 3745-27-60(B)(6)(c) (eff. March 29, 2002) states:

“Scrap tire storage piles of five hundred scrap tires or less shall be at least twenty-five feet away from all buildings and other scrap tire storage piles.”

Several fire lanes at the Facility are completely blocked by scrap tires or solid waste. By Letters dated May 14, 2002; June 25, 2002; September 9, 2002; and October 25, 2002; Ohio EPA notified D&R Recyclers of its non-compliance with the above rule.

19. OAC Rule 3745-27-60(B)(6)(e) (eff. March 29, 2002) states:

“Fire lanes shall be maintained to be free of combustible material including but not limited to weeds and leaves.”

D&R Recyclers has not properly maintained fire lanes at the Facility to be free of combustible materials, including weeds, leaves, solid waste, and scrap tires. By letters dated May 14, 2002; June 25, 2002; September 9, 2002; and October 25, 2002, Ohio EPA notified D&R Recyclers of its non-compliance with the above rule.

20. OAC Rule OAC Rule 3745-60(B)(6)(f) states:

“Sufficient fire lanes shall be maintained to allow access of emergency vehicles at all times to and around the scrap tire storage piles and areas.”

D&R Recyclers has not properly maintained the fire lanes at the Facility to allow access of emergency vehicles at all times to and around the scrap tire storage piles and areas. By letters dated May 14, 2002; June 25, 2002; September 9, 2002; and October 25, 2002, Ohio EPA notified D&R Recyclers of its non-compliance with the above rule.

21. OAC Rule 3745-27-60(B)(9)(b) states that if the Ohio EPA discovers the presence of:

“Mosquito larvae at the premises, the owner or operator shall apply within twenty-four hours a larvicide which is registered for use for mosquito control by the Ohio Department of Agriculture. The application shall be according to the manufacturer’s

or formulator's recommendations. Records shall be kept at the facility indicating the trade name of the larvicide, the date and time of the application, and the name of the person who applied the larvicide."

Mosquito larvae were present on May 9, 2002, in baled tires located in the west central area of the Facility. By letter dated May 14, 2002, Ohio EPA notified D&R Recyclers of its non-compliance with the above rule.

22. OAC Rule 3745-27-65(B) states:

"The owner or operator shall operate the scrap tire collection, storage, or recovery facility in strict compliance with the terms and conditions of the registration certificate or permit issued in accordance with Chapter 3745-27 of the Administrative Code and the scrap tire collection, storage, or recovery facility license issued in accordance with Chapter 3745-37 of the Administrative Code."

The dimensions of the temporary storage area of the Facility for recovery is not operated in accordance with the approved registration certificate. By letters dated January 14, 2002, and April 5, 2002, Ohio EPA notified D&R Recyclers of its non-compliance with the above rule.

23. OAC Rule 3745-27-65(D)(2) states:

"The owner or operator shall maintain the scrap tire handling areas and fire lanes to be free of vegetation or other combustible materials and obstructions to emergency vehicles."

D&R Recyclers has not properly maintained the fire lanes at the Facility to be free of combustible materials including weeds and leaves. Also, D&R Recyclers has not properly maintained the fire lanes at the Facility to allow access of emergency vehicles. By letters dated January 14, 2002, and April 5, 2002, Ohio EPA notified D&R Recyclers of its non-compliance with the above rule.

24. Based upon a review of the information contained in the findings number 13 through 21, D&R Recycling has violated several provisions of OAC Chapter 3745-27. The Division of Solid and Infectious Waste Management has recommended to the Director that formal enforcement be initiated against D&R Recyclers to remedy the violations

of Ohio law cited herein. As a result, D&R Recyclers is not in substantial compliance as required by ORC Section 3734.44(D).

25. Based on findings number 12 through 22, above, a solid waste facility license cannot be issued for the Facility, pursuant to OAC Rule 3745-37-03(A)(3).

V. ORDERS

1. D&R Recyclers* 2003 license application for the Facility is hereby denied.
2. Upon the effective date of these Orders, D&R Recyclers shall cease accepting scrap tires at the Facility.
3. Upon the effective date of these Orders, D&R Recyclers shall comply with the final closure requirements set forth in OAC Rule 3745-27-66 and D&R Recyclers* closure plan.

VI. 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 D&R Recyclers.

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

IT IS SO ORDERED:

Christopher Jones, Director
Ohio Environmental Protection Agency

Issuance Date

Effective Date