

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Case No. 02-ST-006

USED TIRE COMPANY, INC.
(Lee King Ferguson, Jr., President),

▪ **DIRECTOR'S FINAL**
: **FINDINGS AND ORDERS**

Applicant

OHIO E.P.A.
JUN - 5 2003
-FILED DIRECTOR'S JOURNAL

Pursuant to Chapter 3734. and sections 119.09 et seq of the Ohio Revised Code, and the rules of the Ohio Environmental Protection Agency, the Director of Environmental Protection hereby makes the following Findings and issues the following Orders:

FINDINGS

1. On March 7, 2001, the Director of the Ohio Environmental Protection Agency ("Director") received a scrap tire transporter certificate annual renewal application for the year 2001, from Mr. Lee King Ferguson, Jr., ("Applicant"), President of Used Tire Company, Inc.
2. On or about April 4, 2002, the Director issued a Proposed Denial of Applicant's 2001 scrap tire transporter registration certificate application.
3. On May 2, 2002, Used Tire Company, Inc. filed a request for an adjudication hearing regarding the Ohio EPA's proposed denial of Applicant's 2001 scrap tire transporter registration application.
4. On March 24, 2003, the Applicant filed a letter dated March 21, 2003, with the Ohio EPA. The letter effectively withdrew the Applicant's request for an adjudication hearing.
5. Given the fact that Used Tire Company, Inc. does not wish to prosecute its appeal and has effectively withdrawn its request for an adjudication hearing, there remain

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By [Signature] Date 6/5/03

no unresolved issues of law or fact requiring the convening of an adjudication hearing. Therefore, this case is moot and should be dismissed.

6. No evidence has been presented in this adjudication proceeding demonstrating that the Director's proposed denial should not be issued as a final action.
7. Because there has been no evidence presented in this adjudication proceeding demonstrating that the Director's proposed denial of Applicant's 2001 scrap tire transporter registration certificate should not be issued as a final action, the Director should issue the April 4, 2002 proposed action as a final action.
8. No adjudication hearing has been held in this matter.
9. The Hearing Officer assigned to this case has filed a Report and Recommendation recommending that the Director dismiss Ohio EPA Case No. 02-ST-006 and that the Director issue a final action denying the Applicant's 2001 scrap tire transporter registration certificate.
10. No objections to the Hearing Officer's Report and Recommendation have been filed.
11. The recommendations of the Hearing Officer are lawful and reasonable and are hereby adopted.

ORDERS

1. Ohio EPA Case No. 02-ST-006 is dismissed.
2. A final action shall be issued that is identical in substance to the attached April 4, 2002 proposed action. (A copy of the April 4, 2002 proposed action is attached hereto and labeled Exhibit A.)

IT IS SO ORDERED:



CHRISTOPHER JONES
Director

JUN - 5 2003

Date

OHIO E.P.A.
JUN - 5 2003
DIRECTOR'S JOURNAL

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Effective Date: JUN - 5 2003

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF:

Mr. Lee Ferguson
Used Tire Company, Inc.
2625 East Lincoln Street
Canton, Ohio 44707

Director's Final
Findings and Orders

Pursuant to Chapter 3734 of the Ohio Revised Code (ORC), and the rules of the Ohio Environmental Protection Agency (Ohio EPA) adopted thereunder, the Director of Environmental Protection (Director) hereby makes the following Findings and issues the following Orders:

FINDINGS

1. On May 29, 1996, Mr. Lee Ferguson (Applicant), President of Used Tire Co., Inc. (Company), signed a registration application for a scrap tire transporter (Application) for his business located at 2625 East Lincoln Street, Canton, Ohio.
2. On June 6, 1997, Ohio EPA found the Company's Application to be complete in accordance with Ohio Administrative Code (OAC) Rule 3745-27-55 and issued the annual scrap tire transporter registration certificates numbered 76-STT005-001 to 76-STT005-006 to the Company. Subsequent renewals were issued on April 17, 1998, April 27, 1999, and April 25, 2000.
3. The issuance of renewals on April 27, 1999, and April 5, 2000, were based on the Company's compliance with Stark County Board of Health Orders issued on October 8, 1998, and Stark County Prosecutor Orders issued November 20, 1998. Both sets of orders concerned open dumping of scrap tires at 5414 Louisville Street NE, Canton, Ohio, an unauthorized destination for scrap tires. These orders were preceded by notices of violations of OAC Rules 3745-27-56(C)(1) and (C)(3) cited

I certify this to be a true and correct copy of the
original as it appears in the records of the Ohio
Environmental Protection Agency.

Dr. Dwayne Stark dated 6/5/03

in August 18, 1998 and September 1, 1998, letters from the Stark County Health Department. Also, a December 4, 1998, Ohio EPA letter notified the Company that failure to comply with the above orders would result in revocation or suspension of the Company's scrap tire transporter registration.

4. The ten registration certificates issued on April 25, 2000, contained the following special condition after coordination with the Stark County Health Department on the Company's current compliance status.

Failure to maintain compliance with Rule 3745-27-56(C)(3) of the Ohio Administrative Code (OAC) shall be grounds to suspend or revoke this registration, in accordance with OAC Rule 3745-27-55(C)(1). This rule requires that scrap tires which are removed from trailers or vehicles for transfer to another vehicle or trailer, or for sorting, must not remain outside of a covered trailer or vehicle beyond the end of the current work shift.

5. On June 8, 2000, the Stark County Health Department issued a notice of violation to the Company for violations of OAC Rule 3745-27-56(C)(3) at 5414 Louisville Street NE. This is a reoccurrence of the violations listed in Finding 3 at this location and a violation of the registration condition listed in Finding 4. Stark County Board of Health Orders were again issued on July 12, 2000, for violations of OAC Chapter 3745-27.
6. On July 17, 2000, the Canton City Health Department issued a notice of violation letter to the Company for the storage of scrap tires at an unregistered and unlicensed scrap tire facility at 1908 Mahoning Road NE, Canton, Ohio. The letter also cited several violations of OAC Rule 3745-27-60 concerning storage of scrap tires which are also violations of OAC 3745-27-56(C)(3) for storage of scrap tires by a scrap tire transporter " ... *outside of a covered trailer or vehicle beyond the end of the current work shift* ... ". The March 7, 2001, renewal referenced in Finding 4 listed 1908 Mahoning Road NE, Canton, Ohio, for the first time as an additional scrap tire transporter operating location to be added to the scrap tire transporter registration as a location for sorting, grading and/or temporary storage of scrap tires in covered trailers or vehicles. This initial notification of an additional operating location occurred seven months after the City of Canton's notice of violation. On December 24, 2001, Ohio EPA notified the Applicant in writing of deficiencies in this request and that scrap tires can only be stored in covered trailers or vehicles by a scrap tire transporter.
7. On July 17, 2000, the Canton City Health Department also issued a notice of violation letter to the Company for the storage of scrap tires at an unregistered and unlicensed scrap tire facility at 2318 13th Street NE, Canton, Ohio. The letter also cited several violations of OAC Rule 3745-27-60 concerning storage of scrap tires which are also violations of OAC 3745-27-56(C)(3) for storage of scrap tires by a

Director's Final Findings and Orders

Used Tire Company, Inc.

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scrap tire transporter "... outside of a covered trailer or vehicle beyond the end of the current work shift ..." This building is an unregistered and unlicensed scrap tire storage facility. The March 7, 2001, registration renewal included this address as an additional scrap tire transporter operating location to be added to the scrap tire transporter registration as a location for sorting, grading and/or temporary storage of scrap tires in covered trailers or vehicles. This initial notification was over six months after the City of Canton Board of Health Orders. On December 24, 2001, Ohio EPA notified the Applicant in writing of deficiencies in this request and that scrap tires can only be stored in covered trailers or vehicles by a scrap tire transporter.

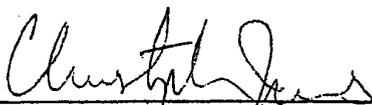
8. On August 11, 2000, the Canton City Health department issued a second order to abate nuisance conditions including the accumulation of tires at both 1908 Mahoning Road NE and 2318 13th Street NE. On August 29, 2000, the Applicant was issued orders by the Canton City Board of Health to abate a public health nuisance by removing all whole scrap tires from the exterior and interior of the building at 2318 13th Street NE, Canton Ohio. Also, on August 29, 2000, the Applicant was issued orders by the Canton City Board of Health to abate a public health nuisance by removing an accumulation of tires, burned and partially burned scrap tires and related debris, and other debris from 1908 Mahoning Road NE.
9. On October 5, 2000, a Stark County Health Department letter to Ohio EPA's Northeast District Office requested the revocation of the scrap tire transporter registration of the Company due to numerous scrap tire storage violations by the Company at 5414 Louisville Street NE, 1908 Mahoning Road NE, 2318 13th Street NE, and 1222 Waynesburg Drive SE. None of these four locations was an authorized location for delivery of scrap tires and none is a registered and licensed scrap tire facility.
10. On March 7, 2001, Ohio EPA received an annual renewal Application from the Company. Violations of the special condition on the 2000 registration certificates at the four locations listed in Findings 5 through 9 above and lack of financial assurance prevented issuance of this registration. To date, the Company has not completed its Application by providing Ohio EPA with an acceptable financial assurance instrument as required by OAC Rule 3745-27-15 and has not resolved all compliance issues.
11. On November 9, 2001, the Stark County Health Department cited the Applicant for delivery of scrap tires to 7815 Lincoln Street SE, East Canton, OH, an additional unapproved location pursuant to OAC 3745-27-56(C)(1). On December 10, 2001, the Stark County Health Commissioner issued a Public Health Order to cease delivery of tires to this site and to remove all scrap tires within 30 days.

12. On November 16, 2001, the Applicant requested that 7815 Lincoln Street SE, East Canton, Ohio, be added to the scrap tire transporter registration as an additional scrap tire transporter operating location for sorting, grading and/or temporary storage of scrap tires in covered trailers or vehicles. On December 24, 2001, Ohio EPA notified the Applicant of deficiencies in this request and that scrap tires can only be stored in covered trailers or vehicles by a scrap tire transporter.
13. Findings 5, 6, 7, 8, 9 and 11 show that the Company has repeatedly violated ORC Chapter 3734, specifically ORC Section 3734.83(E), by delivering scrap tires to at least five different locations not authorized to receive scrap tires by OAC Rule 3745-27-56(C)(1), by storing these tires in violation of OAC Rule 3745-27-56(C)(3), and by operating these locations as unregistered and unlicensed scrap tire facilities in violation of OAC Rules 3745-27-61(A)(1), (B), and (F)(3). Both the Canton City Health Department and the Stark County Health Department have issued numerous notices of violation letters and Board of Health Orders and have referred enforcement to the County Prosecutor's office.
14. To date, the three properties at 1908 Mahoning Road NE, 5414 Louisville Street NE, and 1222 Waynesburg Drive SE have been cleaned up. However, while these cleanups were being completed, the Company was creating two additional illegal scrap tire accumulations at 2318 13th Street NE and 7815 Lincoln Street SE. These two locations remain out of compliance with ORC Chapter 3734 as unregistered and unlicensed scrap tire facilities and remain in violation of Board of Health Orders.
15. Ohio EPA has reviewed the Company's 2001 scrap tire transporter registration renewal application and the Company's compliance history and status and based upon this review, has determined that the application does not meet the requirements of OAC Rules 3745-27-55 (A)(1), (A)(2), and (A)(3). The Application is incomplete due to the lack of financial assurance as described in Finding 10 and does not meet the requirement of OAC Rule 3745-27-55(A)(i). The Applicant and the Company have not demonstrated a capability to operate in accordance with OAC Rule 3745-27-56 and OAC Chapter 3745-27 as required by OAC Rule 3745-27-55(A)(2) based on past violations described in Findings 5, 6, 7, 8, 9 and 11. The Applicant and the Company have not managed or operated the scrap tire transportation business and other solid waste facilities (i.e., five unregistered and unlicensed scrap tire facilities at 1908 Mahoning Road NE, 2318 13th Street NE, 5414 Louisville Street NE, 1222 Waynesburg Drive SE, and 7815 Lincoln Street SE) in compliance with applicable provisions of ORC Chapter 3734, as required by OAC Rule 3745-27-55(A)(3).

ORDERS

1. The 2001 Application for annual scrap tire transporter registration renewal for certificates numbered 76-STT005, submitted by the Company and received by Ohio EPA on March 7, 2001, is hereby denied.
2. Upon the effective date of these Findings and Orders, the Applicant shall immediately cease any transportation of scrap tires in the state of Ohio, except as may be otherwise allowed by OAC Rule 3745-27-54(A)(2) or ORC Section 3734.83(D).
3. Upon the effective date of these Findings and Orders, the Applicant shall immediately comply with OAC Rule 3745-27-55(C)(5)(b) by returning all original registration certificates issued to the Company to Ohio EPA Division of Solid and Infectious Waste Management.
4. Upon the effective date of these Findings and Orders, the Applicant shall comply with OAC Rule 3745-27-55(C)(5)(a) by immediately notifying each of its scrap tire customers of this denial by certified mail.
5. The Applicant shall immediately arrange for the delivery of all scrap tires in the Applicant's possession, or delivered by the Applicant to unauthorized destinations, to destinations authorized by OAC Rule 3745-27-56(C)(1) by registered scrap tire transporters.
6. Nothing in these Findings and Orders shall be construed to authorize any waiver from the requirements of any applicable state solid waste laws or regulations. Furthermore, these Findings and Orders shall not be interpreted to release the Company from responsibility under ORC Chapters 3704, 3734, or 6111; under the Federal Clean Water Act, the Resource Conservation and Recovery Act, or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

IT IS SO ORDERED:



Christopher Jones, Director