

Issuance Date: _____

Effective Date: _____

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Mr. David Green
dba Dave's Paint Ball Park
6370 West Pike
Zanesville, Ohio 43701

Director's Final Findings
and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mr. David Green ("Mr. Green") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3734.84 and Ohio Administrative Code ("OAC") Rule 3745-27-78.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Mr. Green and his heirs and successors in interest liable under Ohio law. No change in ownership relating to the Site (as hereinafter defined) or the business identified as "Dave's Paint Ball Park" shall in any way alter Mr. Green's 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. Mr. Green operates a business known as Dave's Paint Ball Park at 1005 County Line Road, Hopewell Township, Licking County, Ohio (the "Site").

2. Mr. Charles H. Riggle and Ms. Betty M. Riggle are the owners of the forty (40) acre parcel of land on which Mr. Green operates the Site. Mr. Green states in a letter faxed to Ohio EPA on April 4, 2005, that he operates his business at the Site under a verbal agreement to lease a portion of Mr. Charles H. Riggle's property.
3. Mr. Green is a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).
4. The Site 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 in the definition of "solid waste" under OAC Rule 3745-27-01(S)(24).
6. 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."
7. 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."
8. 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.
9. Mr. Green submitted a beneficial use project plan, including multiple revisions, pursuant to OAC Rule 3745-27-78(F). Ohio EPA, Central District Office (CDO) received Mr. Green's final project plan on December 27, 2000.
10. After discussions between Ohio EPA and Mr. Green and after review of Mr. Green's beneficial use project plan and revisions, Ohio EPA was satisfied Mr. Green could implement his beneficial use project. On February 6, 2001, pursuant to OAC Rule 3745-27-78(F), the Director approved Mr. Green's project plan to beneficially use scrap tires at the Site (Project # STBU-4501).
11. OAC Rule 3745-27-78(H)(1) states, "After project plan approval, the applicant shall comply with the project plan as submitted to and approved by the director."

12. Section 5 of Mr. Green's approved project plan for the Site states, in part:

All tires and tire structures have been, and will continue to be, treated with larvacide [sic]. The tires and tire structures are treated in [sic] once a month in March through November. Additionally, the tires shall be regularly inspected for water, and treated with larvacide [sic] as needed. Should inspection reveal that live larvae or adult mosquitos are observed, additional treatments shall be applied.

13. During inspections conducted on August 7, 2003, July 13, 2004, September 22, 2004, and May 27, 2005, Ohio EPA identified several tires holding water and containing live mosquito larvae. These inspections were documented in Notices of Violation dated August 12, 2003, July 19, 2004, September 24, 2004, and June 9, 2005, respectively. Mr. Green has not complied with his beneficial use project plan that was submitted to and approved by the Director. Therefore, Mr. Green violated OAC Rule 3745-27-78(H)(1).
14. OAC Rule 3745-27-78(L) states, "The director may revoke the approval of a project plan for a beneficial use of scrap tires if he concludes at anytime that any applicable laws have been or are likely to be violated."

V. ORDER

Pursuant to OAC Rule 3745-27-78(L), the scrap tire beneficial use project plan approval issued to Mr. Green on February 6, 2001 (Project # STBU-4501), is hereby revoked.

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 Mr. Green.

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 Mr. Green 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 Mr. Green to perform additional activities pursuant to ORC Chapter 3734. or any other applicable laws in the future. Nothing herein shall restrict the right of Mr. Green to raise any administrative, legal, or equitable claim or

defense with respect to such further actions which Ohio EPA may seek to require of Mr. Green. 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:

Ohio Environmental Protection Agency

Joseph P. Koncelik
Director

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