

Issuance Date: _____

Effective Date: _____

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Genesis Concepts Unlimited LLC	:	
1330 North Main St.	:	<u>Director's Final</u>
Orrville, Ohio 44667	:	<u>Findings and Orders</u>

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Genesis Concepts Unlimited LLC ("Genesis") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3734.02(G).

II. PARTIES BOUND

These Orders shall apply to and be binding upon Genesis and successors in interest liable under Ohio law. No change in ownership of Genesis or of the Facility, as hereinafter defined, shall in any way alter Genesis'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. Genesis is the owner of property located at 1330 North Main St., Orrville, Wayne County, Ohio. A small, unnamed tributary flows north across the property to Chippewa Creek. Approximately 800 linear feet of the unnamed tributary has been culverted and overlain by concrete parking lots and buildings.

2. On November 24, 2006, Ohio EPA received from Genesis an application for a registration certificate for a proposed class II scrap tire recovery facility, as that term is defined in OAC Rule 3745-27-01(S)(15)(c), to be located in an existing building at 1330 North Main St., Orrville, Wayne County, Ohio ("Facility"). Genesis submitted subsequent revisions to the application for a registration certificate between January 3, 2007, and January 26, 2007.
3. The revised application includes a Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA). The FIRM shows the unnamed tributary on the property. Moreover, the FIRM designates a portion of the regulatory floodplain extending onto the property in proximity to a portion of the unnamed tributary. A portion of the proposed Facility and associated parking area are located within the regulatory floodplain designated on the FIRM. However, the portion of the proposed Facility and associated parking area within the regulatory floodplain designated on the FIRM are situated atop the culverted unnamed tributary.
4. Ohio Administrative Code (OAC) Rule 3745-27-62(A)(5) states, in part:
 - (A) The director shall not approve an application for a registration certificate or for a permit to install for a scrap tire facility unless the director determines all of the following:
...
(5) The facility, except a scrap tire collection facility, will not be located in a regulatory floodplain."
5. On January 24, 2007, Genesis submitted a request, pursuant to ORC Section 3734.02(G), for an exemption from the siting prohibition in OAC Rule 3745-27-62(A)(5).
6. Genesis stated that, because no scrap tire storage or processing will occur outside of the Facility's enclosed building, granting an exemption from the siting prohibition in OAC Rule 3745-27-62(A)(5) would be unlikely to adversely affect the public health or safety or the environment.
7. Genesis also stated that the FIRM is inaccurate and that no portion of the Facility is to be located in a regulatory floodplain. Genesis provided a letter from the city of Orrville, Ohio, dated January 10, 2007, stating: "The building located at 1330 N. Main Street is located above elevation 1010 [*sic*]. Therefore, it would not be considered to be located in the floodplain of the city of Orrville."
8. Genesis submitted a request, dated January 24, 2007, to FEMA for a Letter of Map Amendment (LOMA). The LOMA, if issued by FEMA, would state that an

existing structure or parcel of land that has not been elevated by fill would not be inundated by the base flood.

9. Genesis was notified by the city of Orrville that a FEMA FIRM modernization project commenced in August 2006. According to the city of Orrville, the engineering consulting firm of Fuller, Mossbarger, Scott & May has been contracted and is presently engaged in map revisions.
10. Pursuant to ORC Section 3734.02(G) the Director, by order, may exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes or hazardous waste, or processing solid wastes that consist of scrap tires, in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a registration certificate, permit, or license or comply with the manifest system or other requirements of this chapter.
11. Because Genesis will not process or store scrap tires outside of the proposed Facility's enclosed building, and because the city of Orrville stated, in a letter dated January 10, 2007, the proposed Facility would not be considered to be located in the floodplain of the city of Orrville, and because the proposed Facility will be located atop the culverted portion of the unnamed tributary and is unlikely to be inundated by flooding, granting Genesis an exemption from the siting prohibition in OAC Rule 3745-27-62(A)(5) is unlikely to adversely affect the public health or safety or the environment provided, Genesis complies with the following orders.

V. ORDERS

1. Pursuant to ORC Section 3734.02(G), Genesis is hereby exempted from the siting prohibition in OAC Rule 3745-27-62(A)(5) for the application for a registration certificate for the Facility.
2. Genesis shall submit a copy of the LOMA, if received from FEMA, not later than 14 days after receipt of the document to Ohio EPA, Division of Solid and Infectious Waste Management, Northeast District Office.
3. Nothing in these Orders shall be construed to authorize any waiver from the requirements of any applicable federal or state laws or regulations except as specified herein. These Orders shall not be interpreted to release Genesis from responsibility under ORC Chapters 3704, 3714, 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.

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 Genesis and/or the Facility.

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 Genesis for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Genesis to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of Genesis to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Genesis. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations which may occur at the Facility.

IT IS SO ORDERED:

Chris Korleski, Director
Ohio Environmental Protection Agency