

Issuance Date: _____

Effective Date: _____

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

IRG Rubber City, LLC	:	<u>Director's Final Findings</u>
3623 Brecksville Road	:	<u>and Orders</u>
Richfield, Ohio 44286	:	
Applicant	:	
	:	
And	:	
	:	
Goodyear Tire and Rubber Company	:	
1144 East Market Street	:	
Akron, Ohio 44316	:	
Property Owner	:	
	:	
Respondents	:	

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to IRG Rubber City, LLC (IRG) and the Goodyear Tire and Rubber Company (Goodyear) and collectively known as Respondents pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Sections 3734.02(G) and Ohio Administrative Code (OAC) Rule 3745-27-03(B).

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and their successors in interest liable under Ohio law. No change in ownership of the "Alpha" and "Beta" areas of Summit County Auditor Parcel No. 6756639 [or portions of replatted Blocks 6 and 7], as hereinafter described, will 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 OF FACT

The Director of Ohio EPA has determined the following findings:

1. ORC Section 3734.02(H) states that "No person shall engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility, or solid waste facility, was operated without prior authorization from the director [of environmental protection], who shall establish the procedure for granting such authorization by rules adopted in accordance with Chapter 119 of the Revised Code."
2. OAC Rule 3745-27-13(A) states that "No person shall, without authorization from the director, engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated. Any person proposing to engage in these activities on land where a hazardous waste facility or solid waste facility was operated shall comply with the requirements of this rule."
3. Respondents IRG and Goodyear are "persons" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).
4. Respondent IRG is considering the purchase of several properties currently owned by Respondent Goodyear including several parcels of property adjacent to the former city of Akron Settlement Street Landfill, a closed municipal solid waste disposal landfill located along Kelly Avenue at Tech Way in Akron, Summit County, Ohio. The parcel was formerly identified as Summit County Auditor Parcel No. 6756639 containing 156.6 acres. Respondent Goodyear recently replatted the area, and the parcels located in this general area are now identified as Blocks 6, 7, 8, and 9.
5. On January 17, 2008, Hull and Associates, Inc. (Hull) submitted to Ohio EPA on behalf of Respondent IRG a request pursuant to OAC Rule 3745-27-13(D)(2) to perform a subsurface investigation on two approximately 9.8-acre areas identified as "Alpha" and "Beta" which together comprise an approximately 19.6-acre portion of the original 156.6-acre Goodyear parcel identified in Finding No. 4. A delineation of the "Alpha" and "Beta" areas is attached as Exhibit 1 to these Orders. A map showing replatted Blocks 6, 7, 8 and 9 is attached as Exhibit 2. The original January 17, 2008 request is titled "*OAC 3745-27-13(D)(2) Authorization Request to Conduct*

Geotechnical Exploration Adjacent to the Former Settlement Street Landfill, City of Akron, Summit County.” Revisions to the original request, dated February 8, 2008, were received by Ohio EPA on February 11, 2008, and February 12, 2008.

6. On February 13, 2008, Ohio EPA issued a concurrence with Respondent IRG's request to conduct the subsurface investigation specified by the January 17, 2008 request, as revised through February 8, 2008, pursuant to OAC Rule 3745-27-13. The February 13, 2008 letter reminded Respondent IRG of their certification report obligations pursuant to OAC 3745-27-13(H)(10), “including, but not limited to... deed notation and plat map showing revised waste limits.”
7. OAC Rule 3745-27-13(H)(10) requires that the owner or operator “shall provide a certification report within sixty days of completion of the filling, grading, excavating, building, drilling, or mining activities.
8. OAC Rule 3745-27-13(H)(10) further states, “This [certification] report shall contain the following:
 - (a) A verification to Ohio EPA that the following activities have been completed:
 - (i) The owner or operator has filed with the board of health having jurisdiction and with Ohio EPA, a plat or revised existing plat for the unit(s) of the solid waste facility or hazardous waste facility and information describing the acreage, exact location, depth, volume, and nature of the waste deposited in the unit(s) of the solid waste facility or hazardous waste facility that was impacted by the filling, grading, excavating, building, drilling, or mining activities;
 - (ii) If waste still remains on the property, the owner shall update any prior recorded notation on the deed to the property, in accordance with state law, to notify any potential purchaser of the property that the land has been used as a hazardous waste facility or solid waste facility and that its use is restricted. The notation shall describe the acreage impacted by the filling, grading, excavating, building, drilling, or mining activities; and the exact location, depth, volume, and nature of waste disposed of at the site.
9. On April 24, 2008, Hull submitted to Ohio EPA on behalf of Respondents a certification report pursuant to OAC Rule 3745-27-13(H)(10) documenting work completed pursuant to the February 13, 2008 authorization. Hull contends in the April 24, 2008 report that based upon information provided, OAC Rule 3745-27-13

10. On May 16, 2008, Ohio EPA issued a Notice of Deficiency (NOD) concerning compliance of the April 24, 2008 certification report with OAC Rule 3745-27-13 and the February 13, 2008 authorization. Ohio EPA advised that the agency could not agree with Hull's conclusions that OAC Rule 3745-27-13 did not apply to the "Alpha" or "Beta" areas. The April 24, 2008 certification report did not contain a deed notation or updated plat map as required by rule.
11. On August 19, 2008, Hull submitted to Ohio EPA on behalf of Respondents a summary report documenting prior land usage as a supplement to the April 24, 2008 certification report pursuant to OAC Rule 3745-27-13(H)(10). Hull contends in the August 19, 2008 report that based upon information provided, OAC Rule 3745-27-13 does not apply to future activities on either the "Alpha" or "Beta" areas. "Alpha" is a part of the Block 6 area identified on Exhibit 2. "Beta" is a part of the Block 7 area identified on Exhibit 2.
12. On September 26, 2008, following review of all the information submitted by Hull on behalf of Respondents, Ohio EPA issued a determination regarding the applicability of OAC Rule 3745-27-13 to the "Alpha" and "Beta" areas. Ohio EPA advised that there appears to be no evidence of waste disposal on the "Beta" area based upon information provided by Respondents, but the agency cannot conclude that OAC Rule 3745-27-13 does not apply to the "Alpha" area.
13. On November 24, 2008, Hull submitted on behalf of Respondents IRG and Goodyear another addendum to the April 24, 2008 certification report clarifying that Respondents intend to request an exemption to the requirements of a deed notation and plat map described in Finding No. 8 above for the "Alpha" area.
14. On November 24, 2008, Hull, on behalf of Respondents IRG and Goodyear, submitted a request pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B) for exemption from the requirements to file a deed notation and plat map and provide verification of such filing as part of the certification report, as set forth in OAC Rules 3745-27-13(H)(10)(a)(i) and 3745-27-13(H)(10)(a)(ii).
15. Pursuant to ORC Section 3734.02(G), the Director finds that the issuance of an exemption relieving Respondents IRG and Goodyear from the requirements to file an updated deed notation and plat map and provide verification of such filing for the "Alpha" area as part of the required certification report, pursuant to OAC Rules 3745-27-13(H)(10)(a)(i) and (ii), is unlikely to adversely affect the public health or safety or the environment.

16. The Director further finds that the exemption granted herein in no way releases Respondents from their responsibilities under ORC Chapter 3734 and OAC Chapter 3745-27 as an owner or operator of a property containing hazardous and/or solid waste.

V. ORDERS

1. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), Respondents IRG and Goodyear are hereby exempted from the requirements of OAC Rules 3745-27-13(H)(10)(a)(i) and (ii) to file a plat revision and a deed notation and to provide verification of such filing as part of the certification report associated with the February 13, 2008 authorization for the subsurface investigation of the "Alpha" area. Ohio EPA agrees that Respondents have found no evidence of waste disposal on the "Beta" area. The exemption granted herein for the "Alpha" area applies solely to Respondents Goodyear and IRG and is not transferable to future owners of the property or for future certification reports required at this property or any other property.
2. Respondents IRG and Goodyear are not exempted from any other obligations under OAC 3745-27-13 at the "Alpha" and "Beta" areas described herein. Respondents IRG and Goodyear are further advised that in the event that any solid or hazardous waste is encountered during any future activities at the "Alpha" or "Beta" areas, all filling, grading, excavating, building, drilling, or mining shall immediately cease and appropriate authorization shall be obtained pursuant to OAC 3745-27-13 prior to recommencing these activities.

VI. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not a party to these Orders, for any liability arising from, or related to, Respondents and/or related to the "Alpha" and "Beta" areas as described herein.

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 and/or the described "Alpha" and "Beta" areas.

VIII. NOTICE

All documents required to be submitted by Respondents 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, Ohio 44087-1969
Attn: Supervisor, DSIWM

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 for noncompliance with these Orders. 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 which may occur with respect to the "Alpha" or "Beta" areas as described in these Orders.

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Chris Korleski, Director