



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

TUE: (614) 644-3020 F a (614) 644-2329

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

June 7, 2002

RE: Director's Final Findings & Orders

CERTIFIED MAIL

Wilbur Buffington
dba Buffs Towing and Hauling
410 Superior Street
Genoa, Ohio 43430

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

You are hereby notified that this action of the Director of Environmental Protection (Director) is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC Section 3745.04. The appeal must be in writing and set forth the action complained of and the ground upon which the appeal is based. It must **be** filed with the Appeals Commission within thirty (30) days after notice of the Director's action. A copy of the appeal must **be** served on the Director within three (3) days of filing with the Appeals Commission. An appeal may be filed at the following address:

Environmental Review Appeals Commission
236 East Town Street
Columbus, Ohio 43215

Sincerely,

Kimberly Reese
Systems Management Unit
Division of Solid & Infectious Waste Management

Enclosure: Director's Final Findings and Orders

cc: Sharon Gbur, CO, DSIWM
Ellen Gerber, NWDO, DSIWM

Bob Taffy, Governor
Maureen O'Connor, Lieutenant Governor
Christopher Jones, Director

OHIO E.P.A.

JUN - 7 2002

ENTERED DIRECTOR'S JOURNAL

Date Issued: JUN 7 - 2002

Date Effective: JUN 7 - 2002

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Wilbur Buffington
dba Buffs Towing and Hauling :
410 Superior Street
Genoa, Ohio 43430

Director's Final Findings
and Orders

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to Wilbur Buffington ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Section 3734.13 of the Ohio Revised Code ("ORC").

II. PARTIES

These Orders shall apply to and be binding upon Respondent and his heirs and successors in interest liable under Ohio law. No change in ownership relating to the Property described below shall in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written action of the Director of Ohio EPA.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734. and the rules promulgated thereunder.

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency

By: Zora L. Clement 6/7/02

IV. FINDINGS OF FACT

The Director has determined the following findings of fact:

1. Respondent is the owner of property consisting of Lot Numbers 7-20 in the Forest Park Addition in Clay Township, Ottawa County, Ohio ("Property.")
2. Respondent has disposed of batteries, motor vehicle bodies, appliances, 55 gallon drums, computer parts, miscellaneous glass, metal, wood, and scrap tires, among other things, on the Property.
3. The aforementioned batteries, motor vehicle bodies, appliances, 55 gallon drums, computer parts, miscellaneous glass, metal, wood, and scrap tires are solid wastes as defined under **ORC** Section 3734.01(E) and OAC Rule 3745-27-01(B)(43).
4. The Property is neither licensed nor permitted as a solid waste disposal facility nor licensed as a scrap tire facility in accordance with **ORC** Chapter 3734., OAC Chapter 3745-27 and OAC Chapter 3745-37. In addition, the Property is not licensed as a junkyard or motor vehicle salvage yard.
5. On April 3, 2000, Ohio EPA received a complaint regarding open dumping of scrap tires at the Property. On April 10, 2000, Ohio EPA conducted an inspection of the Property. In correspondence dated April 18, 2000 and June 7, 2000, Ohio EPA notified Respondent of his violation of OAC ~~Rule~~ 3745-27-05(C) and **ORC** Section 3734.03 for open dumping of solid waste.
6. In correspondence dated June 14, 2000, Respondent sent Ohio EPA a response to the June 7, 2000 Notice of Violation ("NOV") letter. Respondent stated that he had approximately 3,000 scrap tires on the Property and that he would be removing the tires monthly until all of the tires had been recycled. Respondent also stated that he would clean up the property by recycling the scrap material and that he would ~~be~~ working hard over the next ~~two~~ years to achieve this.
7. In correspondence dated July 7, 2000, Respondent sent Ohio EPA receipts showing removal and proper disposal of 1,275 scrap tires and 111 batteries, and the recycling of approximately 9,500 pounds of scrap metal.
8. On June 29, 2000, Ohio EPA conducted an inspection of the Property, and, in correspondence dated July 13, 2000, sent Respondent an NOV letter notifying him of his violation of OAC Rule 3745-27-05(C) and **ORC** Section 3734.03 for open dumping.



9. In correspondence dated July 24, 2000, Respondent sent Ohio EPA copies of receipts showing that he had recycled 1,213 pounds of "irony aluminum" and aluminum cans, and 19.13 tons of sheet iron and car bodies.
10. On October 20, 2000, Ohio EPA conducted an inspection of the Property, and, in correspondence dated November 2, 2000, sent Respondent an NOV letter notifying him of his violation of OAC Rule 3745-27-05(C) and ORC Section 3734.03 for open dumping.
11. On November 13, 2000, Respondent faxed Ohio EPA a list of his waste removal activities for the months of August through November, 2000. Ohio EPA did not receive copies of the receipts until January 3, 2001. The receipts showed the removal and proper disposal of 1,303 scrap tires and 208 batteries. The receipts also showed the recycling of 13,000 pounds of **old** sheet metal, aluminum, and "irony aluminum", and 29.67 tons of car bodies.
12. On May 7, 2001 and July 10, 2001, Ohio EPA conducted inspections of the Property, and, in correspondence dated May 10, 2001 and July 17, 2001, sent Respondent NOV letters notifying him of his violations of OAC Rule 3745-27-05(C) and ORC Section 3734.03 for open dumping.
13. On October 31, 2001, Ohio EPA conducted an inspection of the Property, and, in correspondence dated November 5, 2001, sent Respondent an NOV letter notifying him of his violation of OAC Rule 3745-27-05(C) and ORC Section 3734.03 for open dumping. Respondent was also notified of his violations of ORC Sections 3734.05(A) and 3734.02(C) for operating an unlicensed and unpermitted solid waste disposal facility, OAC 3745-27-61(A)(I) for establishing a scrap tire facility without obtaining a registration and ORC Section 3734.81 for operating a scrap tire facility without a license. Respondent was also in violation of OAC Rule 3745-27-60(B)(8)(b) for not maintaining the required mosquito control records.
14. On November 20, 2001, Ohio EPA conducted an inspection of the Property, and, in correspondence dated November 27, 2001, sent Respondent an NOV letter notifying him of his violation of OAC Rule 3745-27-05(C) and ORC Section 3734.03 for open dumping. Respondent was also notified of his violations of ORC Sections 3734.05(A) and 3734.02(C) for operating an unlicensed and unpermitted solid waste disposal facility, OAC 3745-27-61(A)(1) for establishing a scrap tire facility without obtaining a registration and ORC Section 3734.81 for operating a scrap tire facility without a license.
15. On December 28, 2001, Ohio EPA received copies of receipts showing the removal

and proper disposal of 130 scrap tires and approximately 55 tons of scrap metal.

16. On February 6, 2002, Ohio EPA conducted an inspection of the Property, and, in correspondence dated February 26, 2002, sent Respondent an NOV letter notifying him of his violation of OAC Rule 3745-27-05(C) and ORC Section 3734.03 for open dumping. Respondent was also notified of his violations of ORC Sections 3734.05(A) and 3734.02(C) for operating an unlicensed and unpermitted solid waste disposal facility, OAC 3745-27-61(A)(1) for establishing a scrap tire facility without obtaining a registration and ORC Section 3734.81 for operating a scrap tire facility without a license.
17. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and OAC Rule 3745-27-01(B).
18. ORC Section 3734.03 prohibits any person from disposing of "...solid wastes by open burning or open dumping, except as authorized by the director of environmental protection" OAC Rule 3745-27-05(C) further provides that "no person shall conduct, permit, or allow open dumping," as that term is defined in OAC Rule 3745-27-01(B)(23).
19. OAC Rule 3745-27-01(B)(23) defines open dumping, in part, as "(a) The deposition of solid wastes, other than scrap tires, into waters of the state, and also means the final deposition of solid wastes on or into the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code, and Chapters 3745-27 and 3745-37 of the Administrative Code; or (b) The deposition of solid wastes that consist of scrap tires into waters of the state, and also means the final deposition of scrap tires on or into the ground at any place other than a scrap tire collection, storage, monofill, monocell, or recovery facility licensed under section 3734.81 of the Revised Code, or at a site or in a manner not specifically identified in division (C)(2), (C)(3), (C)(4), (C)(5), (C)(7), or (C)(10) of section 3734.85 of the Revised Code, or at any licensed solid waste facility if the deposition is not in accordance with Chapters 3745-27 and 3745-37 of the Administrative Code...."
20. According to statements made by Respondent, open dumping of solid wastes, including scrap tires has been allowed on the Property from on or about December 1967. However, Ohio EPA did not become aware of the open dumping until receiving a complaint on April 3, 2000.
21. ORC Section 3734.02(C) states that "no person shall establish a new solid waste facility or infectious waste treatment facility . . . without submitting an application for



a permit with accompanying detail plans, specifications, and information regarding the facility and method of operation and receiving a permit issued by the director...
From on or about December 1967, and continuing until the present, Respondent has established an unpermitted solid waste facility as a result of disposing of solid wastes at the Property.

22. ORC Section 3734.05(A)(I) states that "no person shall operate or maintain a solid waste facility without a licence issued...by the board of health of the health district in which the facility is located or **by** the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code." From on or about December 1967, and continuing until the present, Respondent **has** illegally operated a solid waste disposal facility without a license issued by either the Board of Health or Ohio EPA as a result of disposing of solid wastes at the Property.
23. ORC Section 3734.81(A) provides that "no person shall operate a scrap tire collection, storage, monocell, monofill, or recovery facility without a license issued under this section by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code." From on or about October 1993, and continuing until the present, Respondent has illegally operated a scrap tire collection, storage, monocell, monofill, or recovery facility without a license issued by either the Board of Health or Ohio EPA as a result of having approximately 5000 scrap tires on the Property.
24. OAC Rule 3745-27-61(A)(I) provides that "An application for a registration certificate for an 'existing' facility. . . shall be submitted to the director in accordance with the schedule in Rule 3745-27-97 of the Administrative Code." From on ~~or~~ about March 1996, Respondent has illegally operated a scrap tire collection, storage, or recovery facility without a registration issued by Ohio EPA as a result of having approximately 5000 scrap tires on the Property.
25. OAC Rule 3745-27-60(B) provides that storage of scrap tires in any amount outside or inside a building shall be deemed a nuisance, a hazard to public health or safety, or a fire hazard unless the tires are stored in accordance with the standards set forth within OAC Rules 3745-27-60(B)(I) - (8).
26. From on or about March 29, 1996, and continuing until the present, Respondent has failed to store the scrap tires at the Property in accordance with the requirements of OAC Rule 3745-27-60(B).

V. ORDERS

The Respondent shall achieve compliance with ORC Chapter 3734. and the rules promulgated thereunder according to the following compliance schedule:

1. Immediately upon the effective date of these Orders, the Respondent shall cease acceptance of solid waste, including scrap tires, at the Property.
2. Within one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove and properly dispose of all scrap tires on the Property at an authorized scrap tire facility in Ohio or at an authorized scrap tire facility in another state in compliance with the laws of that state.
3. When transporting scrap tires to an authorized scrap tire facility, the Respondent shall utilize a registered scrap tire transporter, unless Respondent transports ten or less tires. Respondent shall also use the scrap tire shipping paper system specified in OAC Rule 3745-27-57. Respondent shall send Ohio EPA copies of the shipping papers and receipts within seven (7) days after removing a load of tires from the property.
4. During the time that any scrap tires remain on the Property, Respondent shall comply with the mosquito control requirements of **OAC Rules 3745-27-60(B) (8)-(10)**.
5. Within one hundred eighty (180) days after the effective date of these Orders, Respondent shall remove all material that can be salvaged or recycled. Respondent shall send copies of receipts for items salvaged or recycled to Ohio EPA within seven (7) days after removing these materials from the Property.
6. Within three hundred sixty-five (365) days after the effective date of these orders, Respondent shall completely remove all solid waste located at the Property to a licensed solid waste disposal facility. The Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of solid wastes disposed and send copies to Ohio EPA within seven (7) days after removing the solid waste from the Property.
7. Within seven (7) days of completion of Order Nos. 2-6, the Respondent shall submit to Ohio EPA a written notice of completion, along with documentation of proper removal and disposal, including receipts.

VI. TERMINATION AND SATISFACTION

The Respondent's obligations under these Orders shall terminate when the Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA, Division of Solid and Infectious Waste Management, that all obligations under these Orders have been performed, and Ohio EPA, Division of Solid and Infectious Waste Management, acknowledges, in writing, Ohio EPA's acceptance of this certification and demonstration.

This certification shall be submitted by the Respondent. The certification shall make the following attestation: "I certify that the information contained in or accompanying this Certification is true, accurate and complete."

VII. 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 signatory to these Orders, for any liability arising out of or relating to the operation of the Respondent's Property.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. NOTICE

All documents demonstrating compliance with these Orders and all other documents required under these Orders to be submitted to Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
347 North Dunbridge Road

Mr. Wilbur Buffington
Director's Final Findings and Orders
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Bowling Green, OH 43402

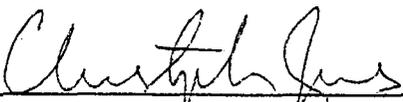
or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

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



Christopher Jones, Director

6-7-02
Date