

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

John Grimes : Director's Final Findings  
d.b.a. Grimes Auto Salvage : and Orders  
RD#1 Cross Creek Township Road 168 :  
Mingo Junction, Ohio 43938 :

Respondent

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to John Grimes d.b.a. Grimes Auto Salvage ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.13, 3734.85 and 3745.01.

**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 of the Property (as hereinafter defined) shall in any way alter Respondent's responsibilities under these Orders.

**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.

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**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of a 37.657 acre parcel of land that was identified in the records of the Jefferson County Recorder's Office as parcel number 03-01162-000. The parcel is located at RD#1 Cross Creek Township Road 168, Jefferson County, Ohio (the "Property"). The Property is located near the town of Mingo Junction.

2. Respondent is a “person” as that term is defined in ORC Section 3734.01(G) and in Ohio Administrative Code (“OAC”) Rule 3745-27-01(P)(3).
3. The Property is neither licensed nor permitted as a scrap tire collection facility nor a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27 and 3745-37.
4. Respondent is a licensed motor vehicle salvage dealer, pursuant to ORC Chapter 4738.
5. Scrap tires are included in the definition of “solid wastes” under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24).
6. The open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) which respectively state that “[n]o person shall dispose of solid wastes by open burning or open dumping ...” and “[n]o person shall conduct, permit, or allow open dumping.”
7. OAC Rule 3745-27-01(O)(4)(b) defines open dumping as, “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.”
8. 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 Rule 3745-27-60(B)(1) - (10).
9. On April 3, 1997, Ohio EPA conducted an inspection of the Property, and, in correspondence dated June 13, 1997, cited Respondent for violations of OAC Rules 3745-27-60(B)(6)(a), 3745-27-60(B)(6)(b), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), and 3745-27-60(B)(8), as effective March 29, 1996 for having individual scrap tire piles greater than 2,500 square feet in basal area, having scrap tire piles greater than 14 feet in height, not maintaining fire lanes to be free of combustible material, not maintaining fire lanes to sufficiently allow access of emergency vehicles, and not controlling mosquitoes. This letter stated that Respondent had approximately 20,000 scrap tires on the Property.
10. On August 14, 1997, Ohio EPA conducted an inspection of the Property and, in correspondence dated August 27, 1997, cited Respondent in violation of OAC Rules

3745-27-60(B)(6)(a), 3745-27-60(B)(6)(b), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), and 3745-27-60(B)(8)(a) and (b), as effective March 29, 1996. Respondent was also cited in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C), as effective July 29, 1976, for open dumping scrap tires on the Property.

11. On December 2, 1998, Ohio EPA conducted an inspection of the Property and, in correspondence dated December 8, 1998, cited Respondent in violation of OAC Rules 3745-27-60(B)(6)(a), 3745-27-60(B)(6)(b), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), and 3745-27-60(B)(8)(a) and (b), as effective March 29, 1996. Respondent was also cited in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C), as effective July 29, 1976, for open dumping scrap tires on the Property.
12. On February 9, 1999, Ohio EPA conducted an inspection of the Property and, in correspondence dated February 19, 1999, cited Respondent in violation of OAC Rules 3745-27-60(B)(6)(a), 3745-27-60(B)(6)(b), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), and 3745-27-60(B)(8)(a) and (b), as effective March 29, 1996.
13. On April 14, 1999, Ohio EPA received a letter from Respondent that contained a copy of a scrap tire manifest indicating that approximately 1,100 scrap tires had been removed from the Property by a registered scrap tire transporter.
14. On May 26, 1999, Ohio EPA conducted an inspection of the Property and, in correspondence dated July 13, 1999, cited Respondent in violation of OAC Rules 3745-27-60(B)(6)(a), 3745-27-60(B)(6)(b), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), and 3745-27-60(B)(8)(a) and (b), as effective March 29, 1996.
15. On October 15, 1999, Ohio EPA conducted an inspection of the Property and, in correspondence dated January 12, 2000, cited Respondent in violation of OAC Rules 3745-27-60(B)(6)(a), 3745-27-60(B)(6)(b), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), and 3745-27-60(B)(8)(a) and (b), as effective March 29, 1996.
16. On January 10, 2003, Ohio EPA conducted an inspection of the Property and, in correspondence dated February 6, 2003, cited Respondent in violation of OAC Rules 3745-27-60(B)(6)(a), 3745-27-60(B)(6)(b), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), and 3745-27-60(B)(8), as effective March 29, 2002.
17. On October 10, 2003, Ohio EPA conducted an inspection of the Property and, in correspondence dated October 14, 2003, cited Respondent in violation of OAC Rules 3745-27-60(B)(6)(a), 3745-27-60(B)(6)(b), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), and 3745-27-60(B)(8), as effective March 29, 2002. Respondent was also cited in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C), as effective August 15, 2003, for open dumping scrap tires on the Property.
18. To date, approximately 19,000 scrap tires still remain on the Property.

19. Scrap tires, if not properly managed, may become a breeding ground for mosquitoes. Mosquitoes are a common disease vector for St. Louis encephalitis, La Crosse encephalitis, Yellow Fever, West Nile Virus and Dengue Fever. From July 30, 2002 to August 2, 2002, and from August 6, 2002 to August 9, 2002, the Jefferson County Health Department performed mosquito trapping at the Property. On October 8, 2003, Ohio EPA received the results of the mosquito trapping from the Ohio Department of Health. The results revealed the presence of mosquitoes which were positive for West Nile Virus.
20. Given the confirmed presence of mosquito species carrying West Nile Virus at the Property, the Director has determined that the accumulation of scrap tires on Respondent's Property constitutes a danger to the public health or safety or to the environment.
21. ORC Section 3734.85 provides that "[i]f the director determines that an accumulation of scrap tires constitutes a danger to the public health or safety or to the environment, he shall issue an order under section 3734.13 of the Revised Code to the person responsible for the accumulation of scrap tires directing that person, within one hundred twenty days after the issuance of the order, to remove the accumulation of scrap tires from the premises on which it is located and transport the tires to a scrap tire storage, monocell, monofill, or recovery facility licensed under section 3734.81 of the Revised Code, to such a facility in another state operating in compliance with the laws of the state in which it is located, or to any other solid waste disposal facility in another state that is operating in compliance with the laws of that state."

## **V. ORDERS**

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

1. Upon the effective date of these Orders, Respondent shall implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(B)(8) effective March 29, 2002. Respondent shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(B)(10) effective March 29, 2002, to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.
2. Within thirty (30) days after the effective date of these Orders, Respondent shall begin removal of all scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires, by removing three thousand (3,000) scrap tires within thirty days after the effective date of these Orders and shall continue to remove 3,000 scrap tires every thirty (30) days thereafter, until all scrap tires are removed from the Property.

3. Respondent shall arrange for scrap tire transportation by a registered transporter, to a scrap tire storage, monocell, monofill, or recovery facility licensed under ORC Section 3734.81, to such a facility in another state operating in compliance with the laws of the state in which it is located, or to any other solid waste disposal facility in another state that is operating in compliance with the laws of that state.
4. Respondent shall obtain receipts from the registered transporter and the facility, indicating weight, volume and number of scrap tires received. Respondent shall forward such documentation to Ohio EPA within ten (10) days after completion of Order #3 above.
5. Respondent shall submit monthly progress reports every month for the previous calendar month until all scrap tires are removed from the Property. Respondent's monthly progress reports, due to Ohio EPA by the 10<sup>th</sup> day of each month, shall summarize Respondent's efforts to comply with the requirements of these Orders. The first progress report shall be delivered to Ohio EPA no later than the 10<sup>th</sup> day of the month immediately following the month that these Orders become effective.
6. Pursuant to ORC Section 3734.85(A), if Respondent has not removed all scrap tires from the Property in accordance with Order Nos. 2 and 3 above, Respondent shall provide the Director and his employees, representatives and contractors with access to the Property to perform whatever measures the Director considers reasonable and necessary to remove and properly manage the scrap tires located on the Property.
7. Upon the written request of the recipient of an order issued under ORC Section 3734.85(A), the Director may extend the time for compliance with the order if the request demonstrates that Respondent has acted in good faith to comply with the order.
8. If the Director removes the scrap tires from the Property, Respondent shall reimburse the Director within thirty (30) days of written request, for the costs incurred by the Director for conducting the removal operation, storing at a scrap tire storage facility, storing or disposing at a scrap tire monocell or monofill facility, processing scrap tires so removed, transporting of the scrap tires from the Property to the scrap tire storage, monocell, monofill, or recovery facility where the scrap tires were stored, disposed of, or processed, and for the administrative and legal expenses incurred by the Director in connection with the removal operation.
9. Respondent shall pay Ohio EPA the amount of \$2,500 in settlement of Ohio EPA's claims for civil penalties which may be assessed pursuant to ORC Chapter 3734. in three installments as follows: (1) within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the first installment of \$833.00; (2) within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio

EPA the second installment of \$833.00; and (3) within ninety (90) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the third installment of \$834.00. The installment payments shall be deposited into the scrap tire management fund established pursuant to ORC Section 3734.82(G). Payment shall be made by official check made payable to "Treasurer, State of Ohio" for the stated amount. The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Property. A copy of the checks shall be sent to Jim Vinch, Legal, Ohio EPA.

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Solid and Infectious Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by Respondent.

#### **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 party to these Orders, for any liability arising from, or related to, Respondent's Property.

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#### **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. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

#### **X. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Southeast District Office  
Division of Solid and Infectious Waste Management  
Attn: Unit Supervisor, DSIWM  
2195 Front Street  
Logan, Ohio 43138

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

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders.

#### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

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Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

