

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Stephen L. Douglas	:	<u>Director's Final Findings</u>
545 Sutphin Road	:	<u>and Orders</u>
Peebles, Ohio 45660	:	

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Stephen L. Douglas ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13 and 3714.12.

II. PARTIES BOUND

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 Site (as hereinafter defined) shall in any way alter Respondent'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 Chapters 3734. and 3714. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of real property, which is described in the attached deed (Attachment A), located off Tener Road in Adams County, Ohio ("Site").
2. Respondent is a "person" as that term is defined in ORC Sections 3714.01(G) and 3734.01(G) and OAC Rules 3745-27-01(P)(3) and 3745-400-01(DD).
3. Respondent is an "owner" or "property owner" as those terms are defined in OAC Rules 3745-27-01(O)(7) and 3745-400-01(EE), respectively.

4. 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) (effective August 15, 2003) further provides that "[n]o person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734. of the Revised Code, and shall submit verification that the solid waste has been properly managed."
5. OAC Rule 3745-27-01(O)(4) (effective August 15, 2003) defines "open dumping", in part, as "[t]he 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, 3745-29, 3745-30 and 3745-37 of the Administrative Code..."
6. ORC Section 3714.06 (A) provides that "[n]o person shall establish, modify, operate, or maintain a construction and demolition debris facility without a construction and demolition debris facility installation and operation license...." OAC Rule 3745-400-04(B), further provides that "[n]o person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code."
7. OAC Rule 3745-400-01(G) defines "construction and demolition debris facility" or "facility" as "any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris."
8. OAC Rule 3745-400-01(F) defines "construction and demolition debris" or "debris", in part, as "those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways."
9. The Site is neither licensed nor permitted as a solid waste disposal facility nor licensed as a construction and demolition debris facility in accordance with ORC Chapters 3714. and 3734. and OAC Chapters 3745-27, 3745-37 and 3745-400.
10. On November 20, 1997, Ohio EPA received a complaint from the Adams County Health Department requesting assistance in dealing with the Site, which is a large open dump off of Tener Road in Adams County, Ohio.
11. On November 20, 1997, Ohio EPA conducted an inspection of the Site. In correspondence dated December 8, 1997, Ohio EPA sent a Notice of Violation ("NOV") notifying Respondent of violations of ORC Section 3734.03 and OAC Rule

3745-27-05(C) for open dumping of solid waste at the Site.

12. Respondent replied to the above NOV by letter dated December 28, 1997, in which Respondent stated that he would install a fence at the main dump site and that the Adams County Health Department was going to "get someone to pick up some of the small spots."
13. On November 18, 1998, Ohio EPA conducted a follow-up inspection of the Site. In correspondence dated November 25, 1998, Ohio EPA sent a NOV notifying Respondent of continuing violations of ORC Section 3734.03 and OAC Rule 3745-27-05(C).
14. On April 18, 2000, Ohio EPA conducted an inspection of the Site and noted that the amount of waste had increased. In correspondence dated April 20, 2000, Ohio EPA sent a NOV notifying Respondent of violations of OAC 3745-400-04(D) for the illegal disposal of construction and demolition debris and continuing violations of ORC Section 3734.03 and OAC Rule 3745-27-05(C).
15. On April 17, 2002, Ohio EPA conducted an inspection of the Site and noted that the amount of waste continued to increase. It was also noted that it appeared a fire had recently occurred at the Site. In correspondence dated May 2, 2002, Ohio EPA sent a NOV notifying Respondent of continuing violations of OAC Rule 3745-400-04(D), OAC Rule 3745-27-05(C) and ORC Section 3734.03.
16. On July 30, 2002, the Adams County Health Department conducted an inspection of the Site. In correspondence dated August 9, 2002, the Adams County Health Department sent a NOV notifying Respondent of violations of OAC Rule 3745-400-04(D), OAC Rule 3745-27-05(C) and ORC Section 3734.03 for illegal disposal of construction and demolition debris and open dumping of solid waste. OAC Rule 3745-400-04(D) was amended on August 31, 2002 and the rule is now contained in OAC 3745-400-04(B).
17. On April 22, 2003, Ohio EPA conducted an inspection of the Site and noted that the amount of waste continued to increase. In correspondence dated May 5, 2003, Ohio EPA sent a NOV notifying Respondent of continuing violations of OAC Rule 3745-400-04(B), OAC Rule 3745-27-05(C) and ORC Section 3734.03.
18. On August 8, 2003, Adams County Health Department was removed from the Director's list of health districts approved to administer and enforce the solid and infectious waste programs and construction and demolition debris program in Adams County.
19. On September 10, 2003, Ohio EPA conducted an inspection of the Site and noted that the amount of waste continued to increase. In correspondence dated September 15,

2003, Ohio EPA sent a NOV notifying Respondent of continuing violations of OAC Rule 3745-400-04(B), OAC Rule 3745-27-05(C) and ORC Section 3734.03.

20. On December 19, 2003, Ohio EPA sent an Invitation to Negotiate ("ITN") Director's Final Findings and Orders ("Orders") in the form of an administrative consent agreement to Respondent. Ohio EPA has attempted to negotiate mutually acceptable consensual Orders with Respondent, however, Respondent has failed to make a substantive offer to resolve his liability for the Site and no agreement has been reached.

V. ORDERS

Respondent shall achieve compliance with Chapters 3714. and 3734. of the ORC and the rules promulgated thereunder according to the following compliance schedule:

1. Immediately upon the effective date of these Orders, Respondent shall cease acceptance and disposal of solid waste and construction and demolition debris at the Site.
2. Within sixty (60) days after the effective date of these Orders, Respondent shall remove all solid waste and construction and demolition debris from the Site and dispose of all solid waste and construction and demolition debris at a licensed solid waste disposal facility. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of wastes disposed.
3. Within fourteen (14) days after completion of Order No. 2, Respondent shall submit to Ohio EPA a written notice of completion, along with documentation of proper removal and disposal, including receipts from the solid waste disposal facility.

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 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 Respondent.

VIII. 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
2195 Front Street
Logan, Ohio 43138
Attn: DSIWM - Unit Supervisor

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, including seeking penalties against Respondent 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 Respondent to perform additional activities pursuant to ORC Chapter 3734 and 3714 or any other applicable law in the future. Nothing herein shall restrict the right of 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 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.

X. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Christopher Jones
Director

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