

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

David N. Butler
7685 Black Run Road
Nashport, Ohio 43830

:
:
:

Director's Final Findings
and Orders

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to David N. Butler ("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 the 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 the 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.

IV. FINDINGS

The Director has determined the following findings:

1. Mr. Butler formerly operated a retail scrap tire business on a .51 parcel of land ("Property") located at 2425 Highland Road, Muskingum County, Ohio, in the City of

- Zanesville. This Property is recorded as Parcel Number 1717840302000 in the Muskingum County Record of Deeds.
2. Although Mr. Butler no longer operates the retail scrap tire business, approximately 17,622 whole and shredded scrap tires remain on the Property from his business and are stored in a haphazard fashion.
 3. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).
 4. The Property is neither licensed nor permitted as a scrap tire facility nor a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27 and 3745-37.
 5. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and Ohio Administrative Code (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) (effective July 29, 1976) 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 3745-27-05(C) was amended on August 15, 2003 and currently states:

"No person shall conduct, permit or allow open dumping. In the event that open dumping . . . 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."
 8. OAC Rule 3745-27-01(O)(4)(b) (effective August 15, 2003) 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."
 9. OAC Rule 3745-27-60(B) (effective March 29, 2002) 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).

10. Scrap tires, if not properly managed, may become a breeding ground for mosquitos. Mosquitos are a common disease vector for St. Louis encephalitis, La Crosse encephalitis, Yellow Fever, West Nile Virus and Dengue Fever.
11. In correspondence dated May 19, 1997; July 28, 1998; September 21, 2000; November 17, 2000; February 27, 2001; April 11, 2001; June 21, 2001; August 9, 2001; February 6, 2002; May 22, 2002; December 3, 2002; February 4, 2003; June 10, 2003; September 23, 2003; January 12, 2004; and April 14, 2004, Ohio EPA notified Respondent that violations of **ORC Section 3734.03** were discovered during inspections of the Property conducted by Ohio EPA on March 21, 1997; May 1, 1997; August 8, 2000; February 23, 2001; April 11, 2001; June 15, 2001; August 3, 2001; February 5, 2002; May 13, 2002; November 22, 2002; June 6, 2003; September 22, 2003; December 31, 2003; and March 19, 2004.
12. In correspondence dated August 27, 1992; November 12, 1992; May 19, 1997; July 28, 1998; September 21, 2000; November 17, 2000; February 27, 2001; April 11, 2001; June 21, 2001; August 9, 2001; February 6, 2002; May 22, 2002; December 3, 2002; February 4, 2003; June 10, 2003; September 23, 2003; January 12, 2004; and April 14, 2004, Ohio EPA notified Respondent that violations of **OAC Rule 3745-27-05(C)** were discovered during inspections of the Property conducted by Ohio EPA on August 10, 1992; October 27, 1992; March 21, 1997; May 1, 1997; August 8, 2000; February 23, 2001; April 11, 2001; June 15, 2001; August 3, 2001; February 5, 2002; May 13, 2002; November 22, 2002; June 6, 2003; September 22, 2003; December 31, 2003; and March 19, 2004.
13. OAC Rule 3745-27-60(B)(6)(a) (effective March 29, 1996) required individual scrap tire storage piles to be less than two thousand five hundred square feet in basal area. OAC Rule 3745-27-60(B)(6)(a) (effective March 29, 2002) requires scrap tire storage piles to be less than two thousand five hundred square feet in basal area and to not exceed the amount specified in OAC Rule 3745-27-61(A) (effective March 29, 2002). In correspondence dated May 19, 1997; July 28, 1998; September 21, 2000; November 17, 2000; February 27, 2001; April 11, 2001; June 21, 2001; August 9, 2001; February 6, 2002; May 22, 2002; December 3, 2002; February 4, 2003; June 10, 2003; September 23, 2003; January 12, 2004; and April 14, 2004, Ohio EPA notified Respondent that violations of **OAC Rule 3745-27-60(B)(6)(a)** were discovered during inspections of the Property conducted by Ohio EPA on March 21, 1997; May 1, 1997; August 8, 2000; February 23, 2001; April 11, 2001; June 15, 2001; August 3, 2001; February 5, 2002; May 13, 2002; November 22, 2002; June 6, 2003; September 22, 2003; December 31, 2003; and March 19, 2004.
14. OAC Rule 3745-27-60(B)(6)(c) (effective March 29, 1996) required scrap tire storage

piles to be separated from other scrap tire storage piles and from buildings and structures by a fire lane with a width of at least fifty feet. OAC Rule 3745-27-60(B)(6)(c) (effective March 29, 2002) requires scrap tire storage piles of five hundred scrap tires or less to be at least twenty five feet away from buildings and other scrap tire storage piles. In correspondence dated May 8, 1996; June 7, 1996; July 18, 1996; May 19, 1997; July 28, 1998; September 21, 2000; November 17, 2000; February 27, 2001; April 11, 2001; June 21, 2001; August 9, 2001; February 6, 2002; and May 22, 2002, Ohio EPA notified Respondent that violations of **OAC Rule 3745-27-60(B)(6)(c)** were discovered during inspections of the Property conducted by Ohio EPA on April 26, 1996; May 7, 1996; May 28, 1996; July 3, 1996; March 21, 1997; May 1, 1997; August 8, 2000; February 23, 2001; April 11, 2001; June 15, 2001; August 3, 2001; February 5, 2002 and May 13, 2002.

15. OAC Rule 3745-27-60(B)(6)(d) (effective March 29, 1996) required fire lanes to be maintained to be free of combustible material. OAC Rule 3745-27-60(B)(6)(d) (effective March 29, 2002) requires scrap tire storage piles of more than five hundred tires to be separated from other scrap tire storage piles, buildings and other structures by a fire lane with a width equal to or greater than fifty-six feet. In correspondence dated May 19, 1997; July 28, 1998; September 21, 2000; November 17, 2000; February 27, 2001; April 11, 2001; June 21, 2001; August 9, 2001; February 6, 2002; May 22, 2002; December 3, 2002; February 4, 2003; June 10, 2003; September 23, 2003; January 12, 2004; and April 14, 2004, Ohio EPA notified Respondent that violations of **OAC Rule 3745-27-60(B)(6)(d)** were discovered during inspections of the Property conducted by Ohio EPA on March 21, 1997; May 1, 1997; August 8, 2000; February 23, 2001; April 11, 2001; June 15, 2001; August 3, 2001; February 5, 2002; May 13, 2002; November 22, 2002; June 6, 2003; September 22, 2003; December 31, 2003; and March 19, 2004.
16. OAC Rule 3745-27-60(B)(6)(e) (effective March 29, 1996) required fire lanes to be sufficiently maintained at all times to allow access of emergency vehicles. OAC Rule 3745-27-60(B)(6)(e) (effective March 29, 2002) requires fire lanes be free of combustible material. In correspondence dated May 19, 1997; July 28, 1998; September 21, 2000; November 17, 2000; February 27, 2001; April 11, 2001; June 21, 2001; August 9, 2001; February 6, 2002; May 22, 2002; December 3, 2002; February 4, 2003; June 10, 2003; September 23, 2003; January 12, 2004; and April 14, 2004, Ohio EPA notified Respondent that violations of **OAC Rule 3745-27-60(B)(6)(e)** were discovered during inspections of the Property conducted by Ohio EPA on March 21, 1997; May 1, 1997; August 8, 2000; February 23, 2001; April 11, 2001; June 15, 2001; August 3, 2001; February 5, 2002; May 13, 2002; November 22, 2002; June 6, 2003; September 22, 2003; December 31, 2003; and March 19, 2004.
17. OAC Rule 3745-27-60(B)(6)(f) (effective March 29, 2002) requires fire lanes to be

maintained to allow access of emergency vehicles at all times, to and around the scrap tire storage piles and areas. In correspondence dated December 3, 2002; February 4, 2003; June 10, 2003; September 23, 2003; January 12, 2004; and April 14, 2004, Ohio EPA notified Respondent that violations of **OAC Rule 3745-27-60(B)(6)(f)** were discovered during inspections of the Property conducted by Ohio EPA on November 22, 2002; June 6, 2003; September 22, 2003; December 31, 2003; and March 19, 2004.

18. OAC Rule 3745-27-60(B)(8) (effective March 29, 1996 and March 29, 2002) requires mosquito control measures to be performed at sites with scrap tires. In correspondence dated May 8, 1996; June 7, 1996; July 18, 1996; May 19, 1997; June 13, 1997; July 28, 1998; September 21, 2000; November 17, 2000; February 27, 2001; April 11, 2001; June 21, 2001; August 9, 2001; February 6, 2002; May 22, 2002; December 3, 2002; February 4, 2003; June 10, 2003; September 23, 2003; January 12, 2004 and April 14, 2004, Ohio EPA notified Respondent that violations of **OAC Rule 3745-27-60(B)(8)** were discovered during inspections of the Property conducted by Ohio EPA on April 26, 1996; May 7, 1996; May 28, 1996; July 3, 1996; March 21, 1997; May 1, 1997; August 8, 2000; February 23, 2001; April 11, 2001; June 15, 2001; August 3, 2001; February 5, 2002 and May 13, 2002.
19. As of December 31, 2003, the Ohio Department of Health had confirmed that three (3) birds and two (2) horses have contracted West Nile Virus in Muskingum County.
20. Given the proximity of Respondent's scrap tire pile to the City of Zanesville, public water supplies, sensitive sub-populations of schools, hospitals and nursing homes, and given the confirmed presence of West Nile Virus in Muskingum County, the potential that a tire fire could obscure major highways such as Interstate 70 and State Route 40, and in consideration of the adverse impact that a tire fire could have on waters of the state, the Director has determined that the accumulation of scrap tires on the 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. Immediately after the effective date of these Orders, Respondent shall implement mosquito control measures at the Property in accordance with the provisions of OAC Rules 3745-27-60(B)(8) and (B)(9). Respondent shall provide copies of the requisite mosquito control records to Ohio EPA Southeast District Office within ten (10) days after each application of the registered pesticide or larvicide.
2. Not later than thirty (30) days after the effective date of these Orders, Respondent shall establish storage piles and fire lanes at the Property in accordance with OAC Rules 3745-27-60(B)(1) through (6).
3. Not later than two hundred and seventy (270) days after the effective date of these Orders, Respondent shall remove all scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires, and shall arrange for their 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. During the 270 day period provided for under this Order No. 3, Respondent shall remove, transport and dispose of at least 800 scrap tires every 30 days with all of the scrap tires being removed, transported and disposed within 270 days after the effective date of these Orders. Respondent shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume and number of scrap tires received. Respondent shall forward mail such documentation to Ohio EPA Southeast District Office on a monthly basis by the seventh day of each month.
4. The Respondent shall continue to comply with Orders No. 1 and 2 above until such time as all scrap tires have been removed from the Property.
5. To the extent that the Property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use his best efforts to secure from such persons access for Respondent and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided to Ohio EPA upon request. If any access

required to implement these Orders is not obtained within seven (7) days after the effective date of these Orders, or within seven (7) days after the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

6. If the Director removes the scrap tires from the Property, the Respondent shall reimburse the Director, within thirty (30) days of written request, for: the costs incurred by the Director for conducting the removal operations, storing scrap tires at a scrap tire storage facility, storing or disposing of scrap tires at a scrap tire monocell or monofill facility, and processing scrap tires so removed; for the transportation of 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.
7. Upon written request of Respondent, the Director may, in his sole discretion, extend the time for compliance with these Orders if the request demonstrates that Respondent has acted in good faith to comply with these Orders.
8. Within ninety (90) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$ 2,500.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the scrap tire management fund established pursuant to ORC § 3734.82(G). Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$2,500.00. The official check 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 and a copy of the check shall be sent to Brian Dearth, Division of Solid and Infectious Waste Management, Systems Management Unit, 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 from the Respondent: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

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

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, the 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 and/or the Property.

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, OH 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 agree 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.

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.

XIII. EFFECTIVE DATE

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

IX. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Christopher Jones, Director

Date

IT IS SO AGREED:

David N. Butler

Date