

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

John Abbott	:	<u>Director's Final Findings</u>
335 Lawwill Road	:	<u>and Orders</u>
Peebles, Ohio 45660	:	

**Respondent**

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Mr. John Abbott ("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 and 3734.85.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and 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 Chapter 3734. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Ms. Alisha Abbott and Ms. Cynthia Abbott own the property where scrap tires are located at 335 Lawwill Road, Peebles, Ohio (the "Site"). The Site was transferred to Alisha and Cynthia when they were minors on or about June 12, 1985.
2. On July 31, 2000, the Adams County Common Pleas Court convicted Respondent of open burning and criminal endangering, *State of Ohio v. John Abbott*, Case No. 20000010. In part, the Court ordered Respondent to transport and dispose of all solid waste and construction and demolition debris in the amount of two truck loads per week until all debris was removed from the Site. Further, the Court ordered

- Respondent to provide access to the Site for any third party for the purpose of removing, transporting or handling and disposing of any waste and/or scrap tires.
3. There are currently an estimated 17,200 scrap tires illegally disposed of at the Site. Respondent is the person responsible for the accumulation of scrap tires at the Site as provided in ORC Section 3734.85.
  4. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and Ohio Administrative Code ("OAC") Rule 3745-27-01(B)(27) as amended by OAC Rule 3745-27-01(P)(3) (effective August 15, 2003).
  5. The Site 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.
  6. Scrap tires are included in the definition of "solid waste" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(B)(43) as amended by OAC Rule 3745-27-01(S)(24) (effective August 15, 2003).
  7. 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."
  8. 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."
  9. 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."
  10. 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).

11. 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. Further, the Ohio Department of Health indicated the presence of the West Nile Virus for the years of 2002 and 2003.
12. On August 23, 2000, February 27, 2001, August 21, 2001, August 26, 2002, and March 5, 2003, Ohio EPA conducted inspections of the Site and observed the following violations:
  - a. OAC Rule 3745-27-05(C) (effective July 29, 1976) for open dumping of solid waste. Open dumping is also a violation of ORC Section 3734.03.
  - b. OAC Rule 3745-27-60(B) (effective March 29, 1996, and as amended on March 29, 2002) for failure to maintain scrap tire storage piles at less than 2,500 square feet in basal area.
  - c. OAC Rule 3745-27-60(B)(8) (effective March 29, 1996, and as amended on March 29, 2002) for failure to provide mosquito control.

These inspections were documented in Notice of Violation ("NOV") letters to Respondent dated September 7, 2000, March 5, 2001, August 27, 2001, September 5, 2002, and March 14, 2003.

13. On December 3, 2003, and March 2, 2004, Ohio EPA conducted inspections of the Site and observed the following violations:
  - A. OAC Rule 3745-27-05(C) (effective on August 15, 2003) for open dumping of solid waste. Open dumping is also a violation of ORC Section 3734.03.
  - B. OAC Rule 3745-27-60(B) (effective March 29, 1996, and as amended on March 29, 2002) for failure to maintain scrap tire storage piles at less than 2,500 square feet in basal area.
  - C. OAC Rule 3745-27-60(B)(8) (effective March 29, 1996, and as amended on March 29, 2002) for failure to provide mosquito control.

These inspections were documented in Notice of Violation ("NOV") letters to Respondent dated December 18, 2003, and March 4, 2004.

14. Given the potential of a tire fire that could obscure State Route 41 and impact waters of the State from pyrolytic oil runoff, and the recent presence of the West Nile Virus in the county, 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.

15. The Director has determined that the accumulation of scrap tires on the Site constitutes a danger to the public health or safety or to the environment.
16. 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**

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 Site in accordance with the provisions of OAC Rule 3745-27-60(B)(8). Respondent shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(B)(10), to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.
2. Not later than thirty (30) days after the effective date of these Orders, Respondent shall establish storage piles and fire lanes at the Site in accordance with OAC Rule 3745-27-60(B)(1) through (6).
3. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of all scrap tires from the Site 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 scrap tire transporter:
  - a. to a scrap tire storage, monofill, monocell, or recovery facility which is operating in accordance with ORC Chapter 3734. and the rules adopted thereunder; or
  - b. to a scrap tire storage, monofill, monocell, or recovery facility in another state operating in compliance with the laws of that state; or
  - c. to any other solid waste disposal facility in another state that is operating in accordance with the laws of that state and that is authorized to accept scrap tires for disposal.

4. Respondent shall obtain receipts from the registered transporter and the authorized scrap tire facility or solid waste disposal facility indicating weight, volume or number of scrap tires transported and shall forward such documentation to Ohio EPA within seven (7) days after completion of Order No. 3.
5. Respondent shall continue to comply with Order Nos. 1 and 2 above until such time as all scrap tires have been removed from the Site.

#### **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 Respondent: "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, OH 43138

Attn: DSIWM 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. 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 the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

**IT IS SO ORDERED:**

**Ohio Environmental Protection Agency**

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Christopher Jones  
Director