

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

David Miller	:	<u>Director's Final Findings</u>
1476 Feurt Hill Road	:	<u>and Orders</u>
Portsmouth, OH 45662	:	

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mr. David Miller ("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 Property (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 used in ORC Chapter 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. 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).
2. Respondent is the owner of two parcels of land, which are identified as parcel numbers 05-2482 and 05-0619 by the Scioto County Auditor, and which are located at 1476

Feurt Hill Road, Clay Township (the "Property").

3. There are currently an estimated 6,000 scrap tires located in seven trailers and 600 whole scrap tires on the ground at the Property.
4. The Property is neither licensed or 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 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).
6. 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 July 29, 1976) states, "No person shall conduct, permit, or allow open dumping."

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."

7. OAC Rule 3745-27-01(O)(4)(b) defines "open dumping" as, "[t]he 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."
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 Rules 3745-27-60(B).
9. On June 3, 2002, Ohio EPA telephoned Respondent requesting to enter the Property.

Respondent verbally denied Ohio EPA access to the Property.

10. On June 10, 2002, after obtaining a search warrant, Ohio EPA conducted an inspection at the Property and observed approximately 6,000 scrap tires in seven trailers and 600 scrap tires on the ground on the Property. Following this inspection, Ohio EPA informed Respondent of the following violations of Ohio's scrap tire requirements in letters dated June 20, 2002, July 3, 2002, August 1, 2002, September 9, 2002, November 4, 2002 and January 30, 2003:
 - 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.
11. 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. Based on testing of mosquitos on June 13, 2002, the Ohio Department of Health has confirmed the presence of mosquitos capable of transmitting diseases at the Property.
12. By letter September 16, 2002, Respondent notified the Agency that Respondent intends to use the tires in the construction of a building at the Property.
13. To date, Respondent has not applied for a beneficial use authorization to construct a structure pursuant to OAC Rule 3745-27-78 nor has Respondent constructed a building on the Property using the tires.
14. On April 6, 2004, Ohio EPA conducted a fly-over of the Property. Ohio EPA documented the fly-over by letters dated April 19, 2004, and May 3, 2004. In these letters, Ohio EPA noted that the semi-trailers and scrap tires remain on the Property.
15. Given the proximity of Respondent's scrap tire pile to sensitive sub-populations like three schools and one nursing home, and the potential of a tire fire that could obscure multiple major thoroughfares and impact waters of the State from pyrolitic oil runoff, 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.
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.”

17. By letter dated August 3, 2004, the Director proposed Final Findings and Orders to Respondent. The accompanying cover letter requested that Respondent contact Ohio EPA-Legal to request a settlement meeting within fourteen days of receipt of the letter. To date, Respondent has not requested a settlement meeting or telephoned Ohio EPA-Legal.

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 Property 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 Property 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 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 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; or

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 Property.

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, Ohio 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

Christopher Jones
Director