

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

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George H. West and Sharon West
3161 Cooperriders Road
Glenford, Ohio 44641

Director's Final Findings
and Orders

Respondents

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to George H. West and Sharon West (collectively "Respondents") 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 BOUND

These Orders shall apply to and be binding upon Respondents and their heirs and successors in interest liable under Ohio law. No change in ownership of the Property (as hereinafter defined) shall in any way alter Respondents' 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. All references to the Ohio Administrative Code rules in these Orders shall be to the version of the rules in effect on the date that these Orders are journalized.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondents George H. West and Sharon West are the owners of a 1.285 acre parcel of real property located on the west boundary line of, and in the west half of

the northwest quarter of, Section 21 of Hopewell Township, Perry County, Ohio upon which is situated an unpermitted and unlicensed open dump of approximately 138,000 scrap tires.

2. Respondents are each 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 or disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27 and 3745-37.
4. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24).
5. The open dumping of scrap tires is a violation of ORC Section 3734.03 which states that "[n]o person shall dispose of solid wastes by open burning or open dumping ..." and OAC Rule 3745-27-05(C) which states:

"No 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."
6. 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."
7. 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).
8. Pursuant to ORC Section 3734.08 and OAC Rule 3745-37-08, the Perry County Health Department (the "Perry County HD") is on the Director's approved list of health districts

authorized to issue solid waste facility licenses under ORC Section 3734.05.

9. OAC Rule 3745-37-08(C)(8) requires health districts that are on the Director's approved list to undertake "appropriate actions against persons . . . which operate solid waste facilities . . . without holding required solid waste licenses . . . whenever necessary to bring about substantial compliance with Chapter 3734 of the Revised Code and Chapters 3745-27 and 3745-37 of the Administrative Code."
10. In the matter of State of Ohio ex rel. Betty D. Montgomery, Attorney General of Ohio v. George H. West, et al., Case No. 02-CV-450 (Perry County Court of Common Pleas), upon the request of the Perry County HD, the State of Ohio entered into a Consent Order and Permanent Injunction ("Consent Order") with Respondents on December 27, 2002 prohibiting Respondents from disposing of any additional scrap tires on the Property, requiring Respondents to employ appropriate mosquito control measures at the Property in accordance with OAC Rule 3745-27-60(B)(8), and obligating Respondents to pay the sum of six hundred dollars (\$600.00) every ninety (90) days into the Scrap Tire Management Fund established pursuant to ORC Section 3734.82 until such time as all of the scrap tires have been "lawfully removed" from the Property.
11. On January 5, 2004, the Southeast District Office of Ohio EPA's Division of Solid and Infectious Waste Management inspected the Property and observed violations of Ohio EPA's scrap tire rules, including the failure to maintain sufficient drainage in violation of OAC Rule 3745-27-60(B)(1), the failure to limit scrap tire storage piles to less than two thousand five hundred (2,500) square feet in basal area in violation of OAC Rule 3745-27-60(B)(6)(a), the failure to separate all piles of more than five hundred (500) scrap tires from buildings and other scrap tire piles by a 56 foot wide fire lane in violation of OAC 3745-27-60(B)(6)(d), the failure to store scrap tires in piles of less than eight feet in height in violation of OAC Rule 3745-27-60(B)(6)(b), the failure to maintain fire lanes to be free of combustible material in violation of OAC Rule 3745-27-60(B)(6)(e) and to allow access to emergency vehicles in violation of OAC Rule 3745-27-60(B)(6)(f).
12. On January 8, 2004, Ohio EPA documented the violations identified in Finding number 11 in a Notice of Violation ("NOV") letter which was sent to Respondents by ordinary mail. In addition, the NOV cited Respondents for open dumping of scrap tires in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C). All of the violations observed by Ohio EPA as described in finding number 11 above and documented in the January 8, 2004 Notice of Violation letter existed and were known to the Health Department of Perry County, Ohio, and the State of Ohio at the time it agreed to the Consent Order described in finding number 10 above.

13. 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.”
14. In order to safeguard human health and the environment, the Director has determined that it would be in the best interests of the State of Ohio and its citizens to obtain access to the Scrap Tire Management Fund established pursuant to ORC Section 3734.82 to facilitate the removal of the scrap tires from the Property even though Respondents remain in full compliance with the Consent Order.

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, Respondents shall implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(B)(8). Respondents 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. Within 120 days after the effective date of these Orders, Respondents shall remove all of the scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires and dispose of the tires as provided in Order number 3 below.
3. Respondents 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. Respondents shall obtain receipts from the registered transporter and the facility,

- indicating weight, volume and number of scrap tires received. Respondents shall forward such documentation to Ohio EPA within ten (10) days after completion of Order number 3 above.
5. Pursuant to ORC Section 3734.85(A), if Respondents have not removed all scrap tires from the Property in accordance with Orders numbered 2 and 3 above, Respondents 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.
 6. 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 Respondents have acted in good faith to comply with the order.
 7. Respondents shall pay the sum of \$18,000 into the Scrap Tire Management Fund established pursuant to ORC Section 3734.82 according to the following schedule: (1) until such time as all of the scrap tires are removed from the Property and the Consent Order referenced in paragraph 10 of the Findings is terminated pursuant to its terms, Respondents shall continue making the payments of \$600.00 every 90 days as required under the Consent Order with the next such payment due December 30, 2004. Such payments shall be mailed to the location specified in the Consent Order; (2) Upon termination of the Consent Order, Respondents shall continue to make payments of \$600.00 every 90 days until the entire balance of \$18,000 is paid in full. Payments made after the termination of the Consent Order shall be made by an official check made payable to "Treasurer, State of Ohio" and 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 to shall be sent to Matt Boyer, Division of Solid and Infectious Waste Management, P.O. Box 1049, Columbus, Ohio 43216.
 8. To the extent that Respondents remain in compliance with these Orders, including the obligation to make payments into the Scrap Tire Management Fund pursuant to Order number 7, above, Ohio EPA agrees not to initiate a cost recovery action against Respondents to recover the costs of removing the scrap tires from the Property, even though such right is expressly granted to Ohio EPA by ORC Section 3734.85(A).
 9. Upon Respondents' performance of their obligations set forth in these Final Findings and Orders, Ohio EPA on behalf of the State of Ohio hereby waives the right to initiate a cost recovery action and the right to recover against Respondents, their heirs, agents, attorneys, employees, successors, and assigns the costs incurred by the Ohio EPA in

the removal, transportation, and disposal of scrap tires from the Property or costs incurred incident thereto.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

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

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

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, Respondents' 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 Respondents.

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 Respondents 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 Respondents 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, Respondents consent 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 Respondents' liability for the violations specifically cited herein.

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

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents 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.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he 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:

George H. West

Signature

Date

Sharon West

Signature

Date

