

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Richard Parker
d.b.a. Parker Tire Company
5608 Akron-Cleveland Road
Hudson, Ohio 44236

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Director's Final Findings
and Orders

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Richard Parker d.b.a. Parker Tire Company ("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 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 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 the owner of two parcels of land that comprise 8.61 acres that were identified in the records of the Summit County Recorder's Office as parcel numbers 0700273 and 0700152. The parcels are located at 5608 Akron-Cleveland Road, Boston Township, Summit County, Ohio (the "Property"). The Property is located near the City of Hudson and is near the Cuyahoga Valley National Park.
2. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).

3. There are currently an estimated 750,000 scrap tires illegally disposed of on the Property.
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 Chapter 3745-27.
5. OAC Rule 3745-27-01(S)(6) defines "scrap tire" as "a type of solid waste and means any unwanted or discarded tire, regardless of size, that has been removed from its original use."
6. Scrap tires are included in the definition of "solid waste" under OAC Rule 3745-27-01(S)(24).
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 Rules 3745-27-60(B)(1) through (8).
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.

12. On July 16, 1992, Ohio EPA and the Summit County General Health District ("SCGHD") conducted an inspection of the Property and discovered that there were approximately 500,000 scrap tires located on the Property.
13. On September 15, 1994, SCGHD filed a complaint in the Summit County Court of Common Pleas regarding Respondent's Property.
14. On April 4, 1995, a pre-trial hearing was held at the Summit County Court of Common Pleas. Respondent stated that he had approximately 750,000 scrap tires on the Property. Respondent also stated that the heights of the tire piles ranged from eight to 25 feet and that each pile had a basal area of greater than 2,500 square feet with no 50-foot fire lanes between the piles.
15. On January 18, 1996, the trial was held at Summit County Court of Common Pleas. On March 1, 1996, the Final Judgement Entry was filed with the Court. The Entry required Respondent to submit a scrap tire facility permit application to Ohio EPA and to allow the SCGHD access to spray the scrap tires for mosquitoes.
16. On October 31, 1996, SCGHD conducted an inspection of the Property and, in correspondence dated November 13, 1996, cited Respondent in violation of OAC Rules 3745-27-60(B)(6)(a), 3745-27-60(B)(6)(b), 3745-27-60(B)(6)(c), 3745-27-60(B)(6)(e), and 3745-27-61(A)(1) as effective March 29, 1996 for having scrap tire piles greater than 2,500 square feet in basal area, for having scrap tire piles greater than 14 feet in height, for not having 50-foot wide fire lanes between the scrap tire piles, for not having the lanes between the scrap tire piles free of combustible material, and for not having a Class II scrap tire facility registration.
17. On December 12, 1996, SCGHD conducted an inspection of the Property and, in correspondence dated December 13, 1996, cited Respondent in violation of OAC Rules 3745-27-60(B)(6)(a), 3745-27-60(B)(6)(b), 3745-27-60(B)(6)(c), 3745-27-60(B)(6)(e), and 3745-27-61(A)(1), as effective March 29, 1996.
18. On July 15, 1997, Respondent signed a settlement agreement with SCGHD that gave Respondent a 10-year cleanup schedule for the Property.

19. On July 10, 2002 and on August 13, 2002, SCGHD performed mosquito trapping near the Property and found one West Nile Virus positive pool during each trapping event.
20. On August 27, 2002, Ohio EPA conducted mosquito trapping at the Property. The results showed that there were mosquitoes capable of carrying disease on the Property.
21. On February 27, 2003, Ohio EPA-Division of Surface Water notified Ohio EPA-

Division of Solid and Infectious Waste Management that the scrap tire handling area on the Property was less than 1,000 feet from Haskell Run, a warmwater habitat and state resource water. This was in violation of OAC Rule 3745-27-54(C)(3)(c)(v) as effective March 1, 1996, and amended March 29, 2002. During the summer of 2003, Respondent corrected this violation.

22. On January 6, 2004, SCGHD requested that Ohio EPA use the scrap tire abatement funds to remove and dispose of the scrap tires located at the Property since Respondent had not taken sufficient action to comply with the July 15, 1997 settlement agreement.
23. On January 16, 2004, Ohio EPA and SCGHD conducted an inspection of the Property, and, in correspondence dated April 1, 2004, cited Respondent in violation of the July 15, 1997 settlement agreement, ORC Section 3734.03, and OAC 3745-27-05(C).
24. As of September 3, 2004, the Ohio Department of Health had confirmed 15 positive mosquito pools for West Nile Virus in Summit County.
25. Given the confirmed presence of mosquito species carrying West Nile Virus near the Property and the proximity to Cuyahoga Valley National Park, 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.
26. 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. If the person responsible for causing the accumulation of scrap tires is a person different from the owner of the land on which the accumulation is located, the director may issue such an order to the landowner."

V. ORDERS

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

15. 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.
 16. 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).
 17. Within thirty (30) days after the effective date of these Orders, Respondent shall attempt to obtain access from the owners of the neighboring property, parcel number 0700274, located directly west of the Property, to remove and dispose of all scrap tires that Respondent caused to be dumped on the neighboring property. Copies of any access agreement obtained by Respondent shall be provided to Ohio EPA upon request. If Respondent fails to obtain access to the neighboring property within thirty (30) days after the effective date of these Orders, Respondent shall promptly notify Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access.
 18. 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 scrap tires dumped by Respondent on adjoining property located directly west of the Property, with parcel number 0700274, 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.
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5. 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. 4 above.
 6. 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 in accordance with Order No. 4 above.

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 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.

VIII. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2110 East Aurora Road
Twinsburg, Ohio 44087

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

