

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Mr. Darin Baker	:	<u>Director's Final Findings</u>
11858 State Route 247 North	:	<u>and Orders</u>
Winchester, Ohio 45697	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Darin Baker ("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 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 responsibilities under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders and in Appendix A (as attached hereto and incorporated herein) 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. Respondent is the owner of a 4.77 acre parcel of land, which is identified in Deed Record Volume 254, Page 299 of the Adams County Record of Deeds dated January 14, 1985, and is located at 11858 State Route 247 North, Winchester, Wayne

- Township, Adams County, Ohio (the "Property").
2. Respondent is 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 storage facility or a solid waste 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. 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) 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."
 6. OAC Rule 3745-27-01(O)(4)(a) defines open dumping as, "[t]he deposition of solid wastes, other than scrap tires, into waters of the state, and also means the final deposition of solid wastes on or into the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code, and Chapters 3745-27, 3745-29, 3745- 30, and 3745-37 of the Administrative Code."
 7. OAC Rule 3745-27-01(O)(4)(b) additionally 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 Rule 3745-27-60(B)(1) - (10).

9. On December 13, 2000, Ohio EPA received a complaint that open dumping of scrap tires and other solid wastes was occurring at the Property.
10. On January 9, 2001, Ohio EPA met with Respondent, conducted an inspection of the Property, and observed open dumping of approximately 2,500 scrap tires and other solid wastes. In correspondence dated January 16, 2001 and February 1, 2001, Ohio EPA notified Respondent that open dumping of scrap tires and other solid wastes occurring on the Property is a violation of OAC Rule 3745-27-05(C), effective July 29, 1976. In the same correspondence, Ohio EPA instructed Respondent to immediately cease open dumping of scrap tires, to remove the scrap tires from the Property by taking them to a licensed solid waste disposal facility, to obtain receipts from the facility to document compliance, and to provide copies of those receipts to Ohio EPA.
11. On September 25, 2001, Ohio EPA conducted another inspection of the Property and observed open dumping of approximately 2,500 scrap tires and other solid wastes. In correspondence dated September 27, 2001, Ohio EPA again notified Respondent that violations of OAC Rule 3745-27-05(C), effective July 29, 1976, remained. In the same correspondence, Ohio EPA instructed Respondent to immediately cease open dumping, to remove and properly dispose of the scrap tires on the Property, to obtain receipts from the disposal facility to document compliance, and to provide copies of those receipts to Ohio EPA.
12. On November 7, 2001, Ohio EPA conducted another inspection of the Property and observed open dumping of approximately 2,500 scrap tires and other solid wastes. In correspondence dated November 13, 2001, Ohio EPA again notified Respondent that violations of OAC Rule 3745-27-05(C), effective July 29, 1976, remained. In the same correspondence, Ohio EPA instructed Respondent to immediately cease open dumping, to remove and properly dispose of the scrap tires and other solid wastes on the Property, to obtain receipts from the disposal facility to document compliance, and to provide copies of those receipts to Ohio EPA.
13. On December 3, 2001, Ohio EPA received a letter from Respondent stating his intent to remove and properly dispose of the scrap tires and other solid wastes at the Property.
14. On June 12, 2002, Ohio EPA conducted a follow-up inspection of the Property and observed that Respondent had removed some of the solid wastes, but was apparently continuing to dispose of additional solid wastes on the Property. The estimated number of scrap tires on the Property appeared to be unchanged. In correspondence dated June 20, 2002, Ohio EPA notified Respondent that violations of ORC Section 3734.03 and OAC Rule 3745-27-05(C), effective July 29, 1976, continue to exist at the Property. Ohio EPA also cited Respondent for failure to properly store or manage the

scrap tires in accordance with OAC Rule 3745-27-60(B), effective March 29, 2002. In the same correspondence, Ohio EPA instructed Respondent to immediately cease open dumping, to implement mosquito control measures pursuant to OAC Rule 3745-27-60(B)(8)(a) and (b), to remove and properly dispose of the scrap tires and other solid wastes on the Property, to obtain receipts from the disposal facility to document compliance, and to provide copies of those receipts to Ohio EPA. Ohio EPA noted that Respondent had not yet submitted receipts to document compliance.

15. On July 30, 2002, Ohio EPA met with Adams County Health Department and Respondent to conduct an inspection of the Property. Ohio EPA observed that Respondent had removed some of the solid wastes from the Property, but the estimated 2,500 scrap tires remained. In correspondence dated August 1, 2002, Ohio EPA again notified Respondent that violations of ORC Section 3734.03, OAC Rule 3745-27-05(C), effective July 29, 1976, and OAC Rule 3745-27-60(B), effective March 29, 2002, remain. In the same correspondence, Ohio EPA instructed Respondent to immediately cease open dumping, to implement mosquito control measures pursuant to OAC Rule 3745-27-60(B)(8)(a) and (b), to remove and properly dispose of the scrap tires and other solid wastes on the Property, to obtain receipts from the disposal facility to document compliance, and to provide copies of those receipts to Ohio EPA. Ohio EPA noted that Respondent had not yet submitted receipts to document compliance.
16. On September 17, 2002, Ohio EPA received a letter from Respondent stating that he was removing and properly disposing, on a weekly basis, bagged solid waste through a waste hauler. Respondent also indicated that after he removed all of the scrap iron, he would contact a scrap tire disposal facility to remove all of the scrap tires.
17. On October 11, 2002, Ohio EPA received a second complaint regarding the accumulation of scrap tires and a foul odor at the Property.
18. On October 22, 2002, Ohio EPA met with Respondent, conducted another inspection of the Property, and observed that Respondent had removed some of the solid wastes from the Property, but the estimated 2,500 scrap tires remain. Respondent stated he would begin removing the scrap tires in November 2002. In correspondence dated November 4, 2002, Ohio EPA notified Respondent that violations of ORC Section 3734.03, OAC Rule 3745-27-05(C), effective July 29, 1976, and OAC Rule 3745-27-60(B), effective March 29, 2002, remain. In the same correspondence, Ohio EPA instructed Respondent to immediately cease open dumping, to implement mosquito control measures pursuant to OAC Rule 3745-27-60(B)(8)(a) and (b), to remove and properly dispose of the scrap tires and other solid wastes, to obtain receipts from the facility to document compliance, and to provide copies of those receipts to Ohio EPA.

Ohio EPA again noted that Respondent had not yet submitted receipts to document compliance.

19. During subsequent inspections on December 3, 2002, February 4, 2003, July 29, 2003, and March 2, 2004, Ohio EPA observed that Respondent had removed additional solid wastes from the Property, but the estimated 2,500 scrap tires remain. In correspondence dated December 6, 2002, February 13, 2003, August 4, 2003, and March 11, 2004, Ohio EPA again notified Respondent that violations of ORC Section 3734.03, OAC Rule 3745-27-05(C), effective July 29, 1976, and OAC Rule 3745-27-60(B), effective March 29, 2002, remain.
20. To date, the estimated 2,500 scrap tires and other solid wastes remain on the Property.
21. 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. In 2003, the Ohio Department of Health confirmed the presence of the West Nile Virus in one horse and one human in Adams County.
22. Given the proximity of Respondent's scrap tire pile to the City of West Union and the confirmed presence of West Nile Virus in Adams County, and given the proximity of the scrap tire pile to State Route 247 and the potential of a tire fire that could obscure the road, 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.
23. 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 Property in accordance with the provisions of OAC Rule 3745-27-60(B)(8), effective March 29, 2002. Respondent shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(B)(9) and (B)(10), effective March 29, 2002, to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide. For details regarding the requirements of OAC Rule 3745-27-60(B)(8) through (B)(10), see Appendix A.
2. Not later than ninety (90) 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) effective March 29, 2002. For details regarding the requirements of OAC Rule 3745-27-60(B)(1) through (B)(6), see Appendix A.
3. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall completely remove all solid wastes, including cars and scrap metal, but excluding scrap tires, from the Property to a licensed solid waste disposal facility and/or to a legitimate recycling facility as defined in OAC Rule 3745-27-01(L)(2). Respondent shall obtain receipts from the licensed solid waste disposal facility and/or the legitimate recycling facility indicating weight or volume of material accepted for disposal and/or recycling and shall forward such documentation to Ohio EPA within (7) seven days after completion of this Order.
4. Not later than one hundred twenty (120) 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, and shall arrange for their transportation, by a registered scrap tire transporter, to an authorized scrap tire facility. Respondent shall obtain receipts from the registered transporter and the authorized scrap tire facility indicating weight, volume and number of scrap tires disposed and shall forward such documentation to Ohio EPA within (7) seven days after completion of this Order.
5. 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.
6. In accordance with ORC Section 3734.85(A), if Respondent has not removed all scrap tires from the Property in accordance with Order No. 4, above, Respondent 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.

7. In accordance with ORC Section 3734.85(A), upon written request of Respondents, the Director may, in his sole discretion, extend the time for compliance with these Orders if the request demonstrates that Respondents have acted in good faith to comply with these Orders.
8. If the Director removes the scrap tires from the Property, Respondent shall reimburse the Director, within thirty (30) days after written request, for the costs incurred by the Director for conducting the removal operation, storing at a scrap tire storage facility, storing or disposing at a scrap tire monocell or monofill facility, processing scrap tires so removed, the transporting of the 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.
9. Within six (6) months after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of two thousand five hundred dollars (\$2,500) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734., in matters not related to scrap tires, and which will be deposited into the environmental protection remediation fund established pursuant to ORC Section 3734.281. Payment shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Property. A copy of the checks shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit.

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: "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 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, Respondent's 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.

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 agrees 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.

XIV. 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

IT IS SO AGREED:

Darin Baker

Signature

Date

Printed or Typed Name