

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Dan Yingling and Jodi Yingling	:	<u>Director's Final Findings</u>
11020 Yingling Road	:	<u>and Orders</u>
Fazeysburg, Ohio 43822	:	

Respondents

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Dan Yingling and Jodi Yingling ("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 and 3734.85.

**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 used in ORC Chapter 3734. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director has determined the following findings:

1. Respondent Jodi Yingling is the owner of 35 acres of land, which is identified in Book 1565, Pages 120 through 125 of the Muskingum County Record of Deeds dated March 6, 2001, and which is located at 11020 Yingling Road, Jackson Township, Muskingum County, Fazeysburg, Ohio (the "Property"). The Property was previously owned by Respondent Dan Yingling.
2. Respondents are "person[s]" as that term is defined in ORC Section 3734.01(G) and Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).

3. Currently, an estimated 2,637 scrap tires are 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 wastes" under OAC Rule 3745-27-01(S)(24).
7. The open dumping of scrap tires is a violation of ORC Section 3734.03, which states: "[n]o person shall dispose of solid wastes by open burning or open dumping."
8. The open dumping of scrap tires is also a violation of OAC Rule 3745-27-05(C), which 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)(1) - (B)(8).
11. On July 29, 2002, Ohio EPA received a complaint regarding scrap tires illegally dumped on the Property.
12. On August 16, 2002, Ohio EPA conducted an inspection of the Property and observed approximately 2,000 scrap tires open dumped on the Property. In a notice of violation ("NOV") letter dated August 27, 2002, Ohio EPA informed Respondent Dan Yingling that open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule

- 3745-27-05(C); and failure to implement mosquito control measures is a violation of OAC Rule 3745-27-60(B)(8).
13. On September 18, 2002, Ohio EPA received a written response from Respondent Dan Yingling. Respondent stated that he had discovered the scrap tires dumped on the Property in 1985 or 1986.
  14. On December 17, 2002, Ohio EPA received another complaint regarding scrap tires illegally dumped on the Property.
  15. On December 19, 2002, Ohio EPA met with Respondent Dan Yingling, conducted an inspection, and observed approximately 2,000 scrap tires open dumped on the Property. In an NOV dated January 13, 2003, Ohio EPA informed Respondent Dan Yingling that open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C); and failure to implement mosquito control measures is a violation of OAC Rule 3745-27-60(B)(8).
  16. On March 28, 2003, Ohio EPA met with Respondent Dan Yingling, conducted another inspection of the Property, and measured the scrap tire piles. In an NOV dated April 1, 2003, Ohio EPA informed Respondent Dan Yingling that open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C); improper storage of scrap tires such that it is deemed a nuisance, a hazard to public health or safety, or a fire hazard is a violation of OAC Rule 3745-27-60(B); failure to maintain sufficient drainage where scrap tires are stored is a violation of OAC Rule 3745-27-60(B)(1); failure to maintain fire lanes free of combustible material is a violation of 3745-27-60(B)(6)(e); and failure to implement mosquito control measures is a violation of OAC Rule 3745-27-60(B)(8).
  17. On September 2, 2003, Ohio EPA conducted another inspection and observed approximately 2,637 scrap tires open dumped on the Property. In an NOV dated September 23, 2003, Ohio EPA informed Respondent Dan Yingling that violations of ORC Section 3734.03, OAC Rule 3745-27-05(C), and OAC Rule 3745-27-60(B), (B)(1), (B)(6)(e), and (B)(8) remain at the Property.
  18. On December 31, 2003, Ohio EPA conducted another follow-up inspection of the Property and observed that the estimated number of scrap tires on the Property appeared to be unchanged. In an NOV dated January 13, 2004, Ohio EPA notified Respondent Dan Yingling that violations of ORC Section 3734.03, OAC Rule 3745-27-05(C) and OAC Rule 3745-27-60(B), (B)(1), (B)(6)(e), and (B)(8) remain at the Property.

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19. On March 19, 2004, Ohio EPA conducted another inspection of the Property and observed no discernible change in the estimated number and location of the scrap tires. In an NOV dated April 5, 2004, Ohio EPA notified Respondents that violations of ORC Section 3734.03, OAC Rule 3745-27-05(C), OAC Rule 3745-27-60(B), (B)(1), (B)(6)(e), and (B)(8) continue to exist at the Property.
20. On October 28, 2004, Ohio EPA conducted another inspection of the Property and observed no discernible change in the estimated number and location of the scrap tires. In an NOV dated November 8, 2004, Ohio EPA notified Respondents that violations of ORC Section 3734.03, OAC Rule 3745-27-05(C), OAC Rule 3745-27-60(B), (B)(1), (B)(6)(e), and (B)(8) continue to exist at the Property.
21. In violation of ORC Section 3734.03 and OAC Rules 3745-27-05(C) and 3745-27-60, an estimated 2,637 scrap tires remain on the Property, as confirmed by October 28, 2004 inspection.
22. 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.
23. Due in part to the confirmed presence of West Nile Virus in Muskingum County and given the proximity of the scrap tires to State Route 16 and the potential of a tire fire that could obscure the road, the Director has determined that the accumulation of scrap tires on Respondents' Property constitutes a danger to the public health or safety or to the environment.
24. 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

Respondents 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) and (B)(9). Respondents shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(B)(10) to Ohio EPA Southeast District Office 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, Respondents shall establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B)(1) through (B)(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 to a licensed disposal facility under one of the following:
  - 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. Respondents 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. Respondents shall continue to comply with Orders Nos. 1 and 2, above, until such time as all scrap tires have been removed from the Property.

## **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 from Respondents: "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 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.

#### **VIII. 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  
2195 Front Street  
Logan, OH 43138

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 Respondents 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 Respondents to perform additional activities pursuant to ORC Chapter 3734. or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. 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

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Date

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