

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Bryan F. and Beth A. Metzler
26370 Oxford Road
Quaker City, OH 43773

Director's Final Findings
and Orders

Respondents

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Bryan F. and Beth A. Metzler ("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

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 of Ohio EPA has determined the following findings:

1. Respondents are the owners of a parcel of property located at 25640 Barber Road, Quaker City, Oxford Township, Guernsey County, Ohio (the "Property").
2. Both Respondents are 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 1,700 passenger tire equivalents ("PTE's") illegally disposed of on the Property.
4. The Property is neither licensed nor permitted as a scrap tire collection facility nor a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters

3745-27 and 3745-37.

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) 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. 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.”
8. 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.”
9. 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) - (8).
10. On September 10, 2003, Ohio EPA conducted an inspection of the Property and observed the following violations:
 - a. ORC Section 3734.03 for open dumping of solid waste.
 - b. OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control.

This inspection was documented in a Notice of Violation (“NOV”) letter to Respondent Bryan Metzler dated December 1, 2003.

11. On December 31, 2003, Ohio EPA conducted an inspection of the Property and observed the following violations:
 - a. ORC Section 3734.03 for open dumping of solid waste.
 - b. OAC Rule 3745-27-05(C) for open dumping of solid waste.

- c. OAC Rule 3745-27-60(B)(1) for failure to store scrap tires so that sufficient drainage shall be maintained.
- d. OAC Rule 3745-27-60(B)(6)(d) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
- e. OAC Rule 3745-27-60(B)(6)(e) for failure of fire lanes to be free of combustible material.
- f. OAC Rule 3745-27-60(B)(6)(f) for failure to maintain fire lanes to allow access of emergency vehicles.

This inspection was documented in an NOV letter to Respondent Bryan Metzler dated January 12, 2004.

12. On September 8, 2004, Ohio EPA conducted an inspection of the Property and observed the following violations:
- a. ORC Section 3734.03 for open dumping of solid waste.
 - b. OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(1) for failure to store scrap tires so that sufficient drainage shall be maintained.
 - d. OAC Rule 3745-27-60(B)(6)(d) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
 - e. OAC Rule 3745-27-60(B)(6)(e) for failure of fire lanes to be free of combustible material.
 - f. OAC Rule 3745-27-60(B)(6)(f) for failure to maintain fire lanes to allow access of emergency vehicles.

This inspection was documented in an NOV letter to Respondent Bryan Metzler dated October 27, 2004.

13. On January 12, 2005, Ohio EPA conducted an inspection of the Property and observed the following violations:
- a. ORC Section 3734.03 for open dumping of solid waste.
 - b. OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(1) for failure to store scrap tires so that sufficient drainage shall be maintained.
 - d. OAC Rule 3745-27-60(B)(6)(d) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
 - e. OAC Rule 3745-27-60(B)(6)(e) for failure of fire lanes to be free of combustible material.
 - f. OAC Rule 3745-27-60(B)(6)(f) for failure to maintain fire lanes to allow access of emergency vehicles.
 - g. OAC Rule 3745-27-60(B)(8) for failure to provide mosquito control.

This inspection was documented in an NOV letter to Respondent Bryan Metzler dated January 13, 2005.

14. On February 23, 2005, Ohio EPA sent Proposed Director's Final Findings and Orders to Respondents. Respondents refused to sign the Proposed Orders.
15. 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.
16. Given the proximity of Respondents' scrap tire pile to Quaker City, the potential that a tire fire could obscure major transportation routes such as Interstate 70, and in consideration of the adverse impact that a tire fire could have on waters of the state, the Director has determined that the accumulation of scrap tires on the Property constitutes a danger to the public health or safety or to the environment.
17. 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

The 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). Respondents shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(B)(9) 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, Respondents shall establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B)(1) through (6).
3. Within one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove all scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires. Respondents shall

- arrange for scrap tire transportation by a registered transporter:
- a. to a scrap tire storage, monocell, monofill, or recovery facility licensed under ORC Section 3734.81; or
 - b. to such a facility in another state operating in compliance with the laws of the state in which it is located; or
 - c. 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 No. 3 above.
 5. Respondents shall submit monthly progress reports every month for the previous calendar month until all scrap tires are removed from the Property. Respondents' monthly progress reports, due to Ohio EPA by the 10th day of each month, shall summarize Respondents' efforts to comply with the requirements of these Orders. The first progress report shall be delivered to Ohio EPA no later than the 10th day of the month immediately following the month that these Orders become effective.
 6. Respondents 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

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 the Respondents to Ohio EPA and shall be signed by the 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 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 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, DSIWM
2195 Front Street
Logan, Ohio 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 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:

Joseph P. Koncelik
Director