

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Jerry F. Gray and Patricia L. Gray : Director's Final Findings  
1194 Umblebee Road : and Orders  
Beaver, Ohio 45613 :

Respondents

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Jerry F. and Patricia L. Gray ("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 defined 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 1194 Umblebee Road, Beaver, Jackson County, Ohio (the "Property").
2. Each 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 2,000 to 4,000 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) 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) - (B)(10).
10. On August 9, 2004, the Jackson County Health Department ("JCHD") 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.

This inspection was documented in correspondence to Respondent Jerry Gray dated August 12, 2004.

11. By Public Health Order dated October 25, 2004, the JCHD ordered Respondent Jerry Gray to abate the public health nuisance existing on his Property by lawfully removing

and disposing of all scrap tires within thirty (30) days.

12. On October 27, 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 correspondence to Respondent Jerry Gray dated November 3, 2004.

13. On December 13, 2004, the JCHD conducted an inspection 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. Failure to comply with the October 25, 2004 Public Health Order.

This inspection was documented in correspondence to Respondent Jerry Gray dated December 17, 2004.

14. Also on December 13, 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.
  - g. Failure to comply with the October 25, 2004 JCHD Public Health Order.

This inspection was documented in correspondence to Respondent Jerry Gray dated December 14, 2004.

15. On January 21, 2005, the JCHD 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. Failure to comply with the October 25, 2004 Public Health Order.

This inspection was documented in correspondence to Respondent Jerry Gray dated January 24, 2005.

16. Also on January 21, 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. Failure to comply with the October 25, 2004 Public Health Order.

This inspection was documented in correspondence to Respondent Jerry Gray dated January 25, 2005.

17. On February 17, 2005, the JCHD conducted another inspection of the Property and observed no sign of removal or clean-up of the scrap tire open dump, in violation of:
- a. ORC Section 3734.03, which prohibits open dumping of solid waste.
  - b. OAC Rule 3745-27-05(C), which prohibits open dumping of solid waste.
  - c. The October 25, 2004 Public Health Order.

This inspection was documented in correspondence to Respondents Jerry Gray and Patricia Gray dated March 4, 2005.

18. Also on February 17, 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. Failure to comply with the October 25, 2004 Public Health Order.

This inspection was documented in correspondence to Respondents Jerry Gray and Patricia Gray dated February 28, 2005.

- 19. 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
- 20. Given the proximity of Respondent's scrap tire pile to the Village of Beaver, public water supplies, the sensitive sub-population of a nursing home, and the potential that a tire fire could obscure major transportation routes such as State Route 335 and State Route 32, and in consideration of the effects of a tire fire could adversely impact waters of the state and the Village of Beaver's well field, 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.
- 21. 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**

- 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). In accordance with OAC Rule 3745-27-60(B)(10), Respondents shall make mosquito control records available for inspection by the director, the health commissioner, and/or authorized representatives. Respondents shall retain copies of mosquito control records for a minimum period of three years.

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, Respondents 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:
  - 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 No. 1 and No. 2, above, until such time as all scrap tires have been removed from the Property

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## **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 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.

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#### **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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Joseph P. Koncelik, Director

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