

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Daniel Graber	:	<u>Director's Final Findings</u>
P.O. Box 94	:	<u>and Orders</u>
Hartville, OH 44632	:	

Respondent

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Daniel Graber ("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 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 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 43.285 acre parcel of land that was identified in the records of the Guernsey County Recorder's Office as parcel number 08-02355. The parcel is located on Endley Road in Guernsey County, Ohio (the "Property"). The Property is located near the towns of Cambridge, Byesville, and Lore City.
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. There are currently an estimated 3,000 to 4,000 scrap tires illegally disposed of on the Property.

4. 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."
5. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24).
6. 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 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."
7. 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."
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. 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.
10. On December 31, 2003, Ohio EPA conducted an inspection of the Property and observed the following violations:
  - a. OAC Rule 3745-27-05(C) for open dumping of solid waste. Open dumping is also a violation of ORC Section 3734.03.
  - b. OAC Rule 3745-400-04(D) for illegal disposal of construction and demolition debris.
  - c. OAC Rule 3745-27-60(B)(1) for failure to maintain sufficient drainage such that water does not collect in the area where scrap tires are stored.

- d. OAC Rule 3745-27-60(B)(6)(d) for failure to separate scrap tire storage piles of more than five hundred scrap tires from other scrap tire storage piles and from buildings and structures by a fire lane with a width equal to or greater than fifty-six feet.
- e. OAC Rule 3745-27-60(B)(6)(e) for failure to maintain the fire lanes 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 a NOV letter to Respondent dated February 2, 2004.

- 11. On March 9, 2004, Respondent met with a representative of Ohio EPA's Division of Solid and Infectious Waste Management at the Property to discuss the violations. At that meeting, Respondent indicated that he thought he would be able to remove all solid waste and construction and demolition debris but that removal of the scrap tires at the Property would be a problem.
- 12. On June 30, 2004, Ohio EPA conducted an inspection of the Property and observed the following violations:
  - a. OAC Rule 3745-27-05(C) for open dumping of solid waste. Open dumping is also a violation of ORC Section 3734.03.
  - b. OAC Rule 3745-400-04(D) for illegal disposal of construction and demolition debris.
  - c. OAC Rule 3745-27-60(B)(1) for failure to maintain sufficient drainage such that water does not collect in the area where scrap tires are stored.
  - d. OAC Rule 3745-27-60(B)(6)(d) for failure to separate scrap tire storage piles of more than five hundred scrap tires from other scrap tire storage piles and from buildings and structures by a fire lane with a width equal to or greater than fifty-six feet.
  - e. OAC Rule 3745-27-60(B)(6)(e) for failure to maintain the fire lanes 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.

- 13. This inspection was documented in a NOV letter to Respondent dated July 27, 2004. On August 10, 2004, Respondent contacted Ohio EPA and indicated that two thirty

cubic yard containers of construction and demolition debris and non-scrap tire solid waste had been removed from the Property. However, approximately 3,000 to 4,000 scrap tires still remain on the Property.

14. On February 9, 2005, Ohio EPA conducted an inspection of the Property and observed the following violations:
  - a. OAC Rule 3745-27-05(C) for open dumping of scrap tires. Open dumping is also a violation of ORC Section 3734.03.
  - b. OAC Rule 3745-27-60(B)(1) for failure to maintain sufficient drainage such that water does not collect in the area where scrap tires are stored.
  - c. OAC Rule 3745-27-60(B)(6)(d) for failure to separate scrap tire storage piles of more than five hundred scrap tires from other scrap tire storage piles and from buildings and structures by a fire lane with a width equal to or greater than fifty-six feet.
  - d. OAC Rule 3745-27-60(B)(6)(e) for failure to maintain the fire lanes free of combustible material.
  - e. 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 a NOV letter to Respondent dated March 1, 2005.

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. As of December 2003, the Ohio Department of Health had confirmed one bird case and two horse cases of West Nile Virus in Guernsey County.
17. Given that the scrap tire pile on the Property is within five miles of the City of Cambridge and sensitive sub-populations consisting of schools, hospitals and nursing homes, and given the confirmed presence of West Nile Virus in Guernsey County, the potential that a tire fire could obscure major highways such as Interstate 70, Interstate 77, and State Route 40, and in consideration of the adverse impact that a tire fire that could have on waters of the state, the Director has determined that the unlawful accumulation of scrap tires on the Property constitutes a danger to the public health or safety or to the environment.
18. 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 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:

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). 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.
2. Not later than 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).
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:
  - 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. 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. 3.

5. 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.
6. Respondent shall submit monthly progress reports every month for the previous calendar month until all scrap tires are removed from the Property. Respondent's monthly progress reports, due to Ohio EPA by the 10<sup>th</sup> day of each month, shall summarize Respondent's efforts to comply with the requirements of these Orders. The first progress report shall be delivered to Ohio EPA no later than the 10<sup>th</sup> day of the month immediately following the month that these Orders become effective.

#### **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 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 Respondent.

#### **VIII. 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.

#### **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., 3714., 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**

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Joseph P. Koncelik, Director