

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Timothy Mercer  
865 Salem Road  
Wellston, Ohio 45692

: Director's Final Findings  
: and Orders  
:

Respondent

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Mr. Timothy Mercer ("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 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 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 real property located at 865 Salem Road in Wellston, Jackson County, Ohio (the "Property") where scrap tires are present.
2. 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 scrap tires illegally disposed of on the Property in an unreclaimed strip mine pit. The depth of the pit is unknown, but using the volume of other nearby strip pits, the number of tires is estimated to be between 100,000 and 331,000.

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. ORC Section 3734.03 states that no person shall dispose of solid wastes by open dumping.
8. OAC Rule 3745-27-01(O)(4)(b) defines "open dumping" as "the 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."
9. OAC Rule 3745-27-05(C) currently 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."
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) - (10).
11. OAC Rule 3745-27-60(B)(4) states, "[s]crap tires shall not be stored by submergence."
12. OAC Rule 3745-27-60(B)(1) states, "[s]ufficient drainage shall be maintained such that water does not collect in the area where scrap tires are stored."

13. OAC Rule 3745-27-60(B)(6)(f) states, “[s]ufficient fire lanes shall be maintained to allow access of emergency vehicles at all times to and around the scrap tire storage piles and areas.”
14. 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.
15. On March 19, 2004, the Jackson County Health Department 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)(4) for storing scrap tires by submergence.

These inspections were documented in Notice of Violation (“NOV”) letters to Respondent dated August 12, 2004.

16. On October 13, 2004, the Jackson County Board of Health declared the Property a public nuisance and approved the issuance of a “thirty (30) day clean-up order” for the Property. This order was documented in a letter to Respondent dated October 25, 2004.
17. On October 27, 2004, December 9, 2004, January 21, 2005, and February 17, 2005, Ohio EPA conducted inspections of the Property with the Jackson County Health Department 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. Open dumping is also a violation of ORC Section 3734.03.
  - c. OAC Rule 3745-27-60(B)(1) for failure to maintain sufficient drainage where scrap tires are stored.
  - d. OAC Rule 3745-27-60(B)(6)(f) for failure to establish sufficient fire lanes to allow emergency access to and around the scrap tires.

These inspections were documented in NOV letters from Ohio EPA to Respondent dated November 3, 2004, December 14, 2004, January 25, 2005, and February 17, 2005.

18. The Jackson County Health Department also documented violations of OAC Rule 3745-27-05(C) and ORC Section 3734.03 based on the October 27, 2004, December 9, 2004, and January 21, 2005, inspections in NOV letters to Respondent dated December 17, 2004 and January 25, 2005. A violation of ORC Section 3745-

27-60(B) was also documented in the March 4, 2005 NOV based on a February 17, 2005 inspection.

19. To date, the scrap tires remain on the Property as confirmed by Ohio EPA during the latest inspection conducted May 13, 2005.
20. Given the potential of a tire fire that could obscure State Route 32 and impact waters of the State from pyrolytic oil runoff, and the fluctuating water levels in the flooded strip mine pit creating pools in the scrap tires that are serving as a mosquito harborage, 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.”
22. ORC Section 3734.85(A) provides that, “[i]f the recipient of an order issued under this division fails to comply with the order within one hundred and twenty days (120) days after the issuance of the order or, if the time for compliance with the order was so extended, within that time, the director shall take such actions as he considers reasonable and necessary to remove and properly manage the scrap tires located on the land named in the order.”
23. ORC Section 3734.85(A) provides that, “[t]he director, through employees of the environmental protection agency or a contractor, may enter upon the land on which the accumulation of scrap tires is located and remove and transport them to a scrap tire recovery facility for processing, to a scrap tire storage facility for storage, or to a scrap tire monocell or monofill facility for storage or disposal.”
24. ORC Section 3734.85(A) provides that, “[i]f a person to whom a removal order is issued under this division fails to comply with the order and if the director performs a removal action under this section, the person to whom the removal order is issued is liable to the director for the costs incurred by the director for conducting the removal operation, storage at a scrap tire storage facility, storage or disposal at a

scrap tire monocell or mono fill facility, or processing of the scrap tires so removed, the transportation of the scrap tires from the site of the accumulation to the scrap tire storage, monocell, monofill, or recovery facility where the scrap tires were stored, disposed of, or processed, and the administrative and legal expenses incurred by the director in connection with the removal operation.”

## **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 one hundred and 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 or submerged 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; or
  - d. to a location authorized by the Director to beneficially use scrap tires, in accordance with OAC Rule 3745-27-78.
3. 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 off the Property each month, and shall forward such documentation to Ohio EPA within seven (7) days after the removal.

4. In accordance with ORC Section 3734.85(A), upon written request of Respondent, the Director may, in his sole discretion, extend the time for compliance with these Orders if the request demonstrates that Respondent has acted in good faith to comply with these Orders.

#### **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:

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Ohio Environmental Protection Agency  
Southeast District Office  
Division of Solid and Infectious Waste Management  
2195 Front Street  
Logan, Ohio 43138  
Attn: DSIWM Supervisor

and to:

Jackson County Health Department  
B.J. Allison Health Center  
200 East Main Street  
Jackson, Ohio 45640-1716

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 Chapters 3734., 6111., 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:**

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**Ohio Environmental Protection Agency**

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Joseph P. Koncelik, Director