

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.13 and 3745.01 have been made and are outlined below. Nothing in these findings shall be considered to be an admission by Respondents of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondents Frame and Rosebush LLC, are each “persons” as that term is defined in ORC Section 3734.01(G) and in Ohio Administrative Code (“OAC”) Rule 3745-27-01(B)(27), as amended by OAC Rule 3745-27-01(P)(3) (effective August 15, 2003).
2. OAC Rule 3745-27-01(I)(5), as amended by OAC Rule 3745-27-01(S)(6) (effective August 15, 2003), 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.”
3. Scrap tires are included in the definition of “solid waste” under OAC Rule 3745-27-01(B)(43), as amended by OAC Rule 3745-27-01(S)(24) (effective August 15, 2003).
4. OAC Rule 3745-27-01(B)(23), as amended by OAC Rule 3745-27-01(O)(4)(b) (effective August 15, 2003) 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.”
5. The open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) (effective July 29, 1976) 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.”
6. OAC Rule 3745-27-05(C) was amended on August 15, 2003 and 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.

7. OAC Rule 3745-27-60(B) (effective March 29, 1996, as amended March 29, 2002) 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).
8. Scrap tires, if not properly managed, may become a breeding ground for mosquitoes. Mosquitoes are common disease vectors for St. Louis encephalitis, La Crosse encephalitis, Yellow Fever, West Nile Virus and Dengue Fever.
9. As of December 22, 2003, there has been one confirmed human case of West Nile Virus in Washington County.
10. Respondent Frame purchased property located at 881 State Route 555, Little Hocking, Washington County, Ohio, in February of 1982. At the time of the sale Respondent Frame was aware of the presence of a ravine filled with scrap tires on the property. As a condition of the sale, Respondent Frame required the former owner to cover the scrap tires with 12 inches of soil. Only a portion of the tires were covered with soil.
11. The ravine runs along a joint property line and eventually drains into the Little Hocking River, a tributary of the Ohio River.
12. Ohio EPA estimates that approximately 80,000 to 100,000 scrap tires are illegally disposed of in the ravine. Additionally, approximately 2000 to 3000 of those tires have fallen onto neighboring property owned by Bernard Rauch.
13. On August 22, 1991, the Washington County Health Department received a complaint from John Bird of Ohio Division of Natural Resources ("ODNR"), Division of Water Craft, alleging that the tires partially buried on Respondent Frame's property were rolling from the side of the tire pile not covered by soil, down into the ravine, and were then being washed into the Ohio River.
14. Washington County Health Department conducted an inspection of Respondent Frame's property on August 23, 1991. In correspondence dated September 10, 1991, Washington County Health Department notified Respondent Frame of the following violations:
 - A. ORC Section 3734.03 for open dumping of scrap tires.
 - B. ORC Section 3734.05 (A)(1) for operating a solid waste facility without a license.

15. In correspondence dated November 4, 1992, John Bird of ODNR notified Respondent Frame that while on patrol on September 6, 1992, he observed and photographed a large number of tires in and around the drainage ravine on Respondent Frame's property and also observed 21 scrap tires in the Little Hocking River between Respondent Frame's property and the Ohio River.
16. On November 29, 1994, Respondent Frame sold 1.022 acres of his property, parcel #07-23708.001, to Respondent Rosebush LLC. This parcel contains the majority of the illegally disposed scrap tires referred to in Finding No. 15.
17. The Property is defined as the adjacent property owned by Respondent Frame, Respondent Rosebush LLC, and Bernard Rauch where scrap tires are illegally disposed.
18. Rosebush LLC is owned by Rosebush Non-Profit Corporation. Respondent Frame is the sole shareholder of Rosebush Non-Profit Corporation.
19. On November 4, 2002, Ohio EPA received a complaint that open dumping of scrap tires had occurred on the Property. The complaint was forwarded to the Washington County Health Department for investigation on December 6, 2002.
20. Ohio EPA conducted an inspection of the Property on January 15, 2003. In correspondence dated March 27, 2003, Ohio EPA notified Respondent Frame that open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) (effective July 29, 1976).
21. Ohio EPA conducted an inspection of the Property on December 9, 2003. In correspondence dated January 7, 2004, Ohio EPA notified Respondent Frame of the following violations:
 - A. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires.
 - B. OAC Rule 3745-27-60(B)(5) for covering scrap tires with soil.
 - C. OAC Rule 3745-27-60(B)(6)(a) and (b) for failure to properly store scrap tires.
 - D. ORC Section 3734.05(A)(1) and OAC Rule 3745-37-01(A) for operating and maintaining a solid waste facility without a license.
 - E. ORC Section 6111.04(A)(1) for allowing scrap tires to enter into waters of the state.

22. Ohio EPA conducted an inspection of the Property on May 27, 2004. In correspondence dated June 17, 2004, Ohio EPA notified Respondent Frame of the following violations:
- A. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires.
 - B. OAC Rule 3745-27-60(B)(5) for covering scrap tires with soil.
 - C. OAC Rule 3745-27-60(B)(6)(a) and (b) for failure to properly store scrap tires.
 - D. ORC Section 3734.05(A)(1) and OAC Rule 3745-37-01(A) for operating and maintaining a solid waste facility without a license.
 - E. ORC Section 6111.04(A)(1) for allowing scrap tires to enter into waters of the state.
23. Ohio EPA conducted an inspection of the Property on November 12, 2004. In correspondence dated November 26, 2004, Ohio EPA notified Respondent Frame of the following violations:
- A. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires.
 - B. OAC Rule 3745-27-60(B)(5) for covering scrap tires with soil.
 - C. OAC Rule 3745-27-60(B)(6)(a) and (b) for failure to properly store scrap tires.
 - D. ORC Section 3734.05(A)(1) and OAC Rule 3745-37-01(A) for operating and maintaining a solid waste facility without a license.
 - E. ORC Section 6111.04(A)(1) for allowing scrap tires to enter into waters of the state.
24. On January 10, 2005, Ohio EPA received a faxed copy of an access agreement signed by Mr. Rauch allowing Ohio EPA and its officers, employees, authorized representatives, and any other person under order from Ohio EPA access to Mr. Rauch's portion of the Property to clean up the tires.
25. 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.

26. Due to the proximity of the Property to Little Hocking Elementary School, Cutler Elementary School, and Blennerhassett Elementary and Junior High Schools, the confirmed presence of West Nile Virus in Washington County, and considering the proximity of the Property to U.S. Route 50 and the potential of a tire fire that could obscure the road, and in consideration of the effects of a tire fire that could adversely impact waters of the state, specifically the Little Hocking and Ohio Rivers, the Director has determined that the accumulation of scrap tires at the Property constitutes a danger to the public health or safety, or to the environment.
27. 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 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), as effective March 29, 2002. Respondents shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(B)(9) and (10), effective March 29, 2002, to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.
2. No later than 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 any buried scrap tires.
3. Respondents shall arrange for scrap tire transportation, by a registered scrap tire transporter, to a scrap tire storage, monocell, monofill, or recovery facility licensed under ORC Section 3734.81, 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.

4. Respondents shall obtain scrap tire shipping papers from the registered transporter and the authorized scrap tire facility indicating weight, volume and number of scrap tires received and shall forward such documentation to Ohio EPA Southeast District Office within ten (10) days after completion of Order No. 3.
5. Upon the written request of the recipient of an order issued under ORC Section 3734.85(A), the Director may extend the time for compliance with the order if the request demonstrates that Respondents have acted in good faith to comply with the order.
6. In accordance with ORC Section 3734.85(A), if Respondents fail to remove scrap tires from the Property in accordance with Order No. 2 above, Respondents shall provide the Director and his employees, representatives and contractors with access to the Property to perform whatever measures the Director considers reasonable and necessary to remove and properly manage the scrap tires located at the Property.
7. If the Director removes the scrap tires from the Property, Respondents shall reimburse the Director, within thirty (30) days after written request, for the costs incurred by the Director for: conducting the removal operation, storing scrap tires at a scrap tire storage facility, storing or disposing of at a scrap tire monocell or monofill facility, processing scrap tires so removed, transporting scrap tires from the Property to the scrap tire storage, monocell, monofill, or recovery facility where the scrap tires were stored, disposed of, or processed, and for the administrative and legal expenses incurred by the Director in connection with the removal operation.
8. Within thirty (30) days after the effective date of these Orders, Respondents shall collectively pay Ohio EPA the amount of \$2,500 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the scrap tire management fund established pursuant to ORC Section 3734.82(G). Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$2,500. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondents and the Property and a copy of the check shall be sent to Brian Dearth, DSIWM, Ohio EPA.

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: "I 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 each Respondent, or if the Respondent is a corporation or a limited liability company, by a responsible official of the Respondent. For purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice-president, or his duly authorized representative.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the Respondents' Property.

VIII. 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.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. 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
2195 Front Street
Logan, Ohio 43138
Attn: Unit Supervisor-DSIWM

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Joseph P. Koncelik
Director

Date

IT IS SO AGREED:

Ronald Frame

Signature

Date

Printed or Typed Name

Rosebush Land Company, Limited Liability Company

Signature

Date

Printed or Typed Name

Title

