

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Mid-Ohio Tire Company, Inc. : Director's Final Findings
Formerly dba A-1 Tire Company : and Orders
999 Park Avenue East :
Mansfield, Ohio 44905 :

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mid-Ohio Tire, Inc., formerly dba A-1 Tire ("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 any successors in interest liable under Ohio law. No change in ownership of Respondent or 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 approximately 1.667 acres of land located at 999 Park Avenue East, in Mansfield, Richland County, Ohio (the "Property"). The Property is identified by Quit claim deed executed December 12, 2002, a copy of which is attached hereto as "Exhibit 1".
2. Respondent operated a retail tire business, A-1 Tire Company, on the Property until approximately May 2005.
3. 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).

4. Currently, an estimated 3,000 scrap tires are illegally disposed of on the Property.
5. The Property is neither licensed nor permitted as a scrap tire facility or a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27 and 3745-37.
6. 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."
7. Scrap tires are included in the definition of "solid waste" under OAC Rule 3745-27-01(S)(24).
8. 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."
9. 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."
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 paragraphs (B)(1) through (B)(10).
11. ORC Section 3734.81 states, "no person shall operate a scrap tire collection, storage, monocell, monofill, or recovery facility without a license issued under this section by the board of health of the health district in which the facility is located[.]"
12. OAC Rule 3745-27-61(A)(1) requires that scrap tire collection, class II storage, and class II scrap tire recovery facilities register as such a facility. OAC Rule 3745-27-61(A)(2) provides an exemption to the registration requirement for tire retailers who have no more than one thousand scrap tires present any time in an unsecured, uncovered, outdoor location, or who have any number of scrap tires secured in a

building or a covered, enclosed container, trailer, or installation.

13. On October 14, 1997, the Mansfield/Ontario/Richland County Health Department ("the Health Department") issued a Notice of Violation (NOV) letter to Respondent for violations of OAC Rule 3745-27-60 regarding the scrap tire regulations. The Health Department instructed A-1 to either register as a scrap tire collection facility or to meet the exemption status defined in OAC Rule 3745-27-61 for storage of one thousand tires.
14. On July 12, 2002 and June 6, 2003, the Health Department sent NOV letters to Respondent ordering the removal of all tires in excess of the one thousand tires allowed by the exemption specified in OAC Rule 3745-27-61. The letters also stated that Respondent must comply with OAC Rule 3745-27-60(B)(8) to control mosquitos.
15. On November 17, 2004, the Health Department issued Board Orders (Resolution 2004-09) to Respondent citing the following violations:
 - a. Open dumping (see ORC Section 3734.03 and OAC Rule 3745-27-05(C));
 - b. Operating without a license (see ORC Section 3734.81);
 - c. Operating a scrap tire storage facility without obtaining registration (see OAC Rule 3745-27-61(A)(1));
 - d. Exceeding the basal area of 2,500 square feet allowed for a retail tire dealer (see OAC Rule 3745-27-60(B)(6)(a));
 - e. Failure to keep fire lanes free of combustibile material (see OAC Rule 3745-27-60(B)(6)(e));
 - f. Failure to maintain fire lanes sufficient to allow access of emergency vehicles (see OAC Rule 3745-27-60(B)(6)(f)); and
 - g. Failure to implement mosquito control measures (see OAC Rule 3745-27-60(B)(8)).

The Board Orders require Respondent to implement and document mosquito control measures, establish tire storage piles, create fire lanes, begin and document removal of tires by a registered transporter, and provide monthly progress reports to the Board of Health.

16. On January 27, 2005, the Health Department requested that Ohio EPA pursue enforcement against Respondent to address the violations of law occurring on the Property.
17. The Health Department and Ohio EPA conducted an inspection of the Property on February 1, 2005. The Health Department sent a NOV letter to Respondent on March 17, 2005, citing the following violations:
 - a. Open dumping (see ORC Section 3734.03 and OAC Rule 3745-27-05(C));

- b. Operating without a license (see ORC Section 3734.81);
- c. Operating a scrap tire storage facility without obtaining registration (see OAC Rule 3745-27-61(A)(1));
- d. Exceeding the basal area of 2,500 square feet allowed for a retail tire dealer (see OAC Rule 3745-27-60(B)(6)(a));
- e. Failure to keep fire lanes free of combustible material (see OAC Rule 3745-27-60(B)(6)(e));
- f. Failure to maintain fire lanes sufficient to allow access of emergency vehicles (see OAC Rule 3745-27-60(B)(6)(f)); and
- g. Failure to maintain fire lanes (see OAC Rule 3745-27-60(B)(6)(d)).

The NOV also notified Respondent of the obligation to implement mosquito control measures and that failure to do so is a violation of OAC Rule 3745-27-60(B)(8).

18. The Health Department and Ohio EPA conducted an inspection of the Property on June 14, 2005. The Health Department sent an NOV letter to Respondent dated June 17, 2005, citing the following violations:
 - a. Open dumping (see ORC Section 3734.03 and OAC Rule 3745-27-05(C));
 - b. Operating without a license (see ORC Section 3734.81);
 - c. Operating a scrap tire storage facility without obtaining registration (see OAC Rule 3745-27-61(A)(1)); and
 - d. Exceeding the basal area of 2,500 square feet allowed for a retail tire dealer (see OAC Rule 3745-27-60(B)(6)(a)).

The NOV also notified Respondent of the obligation to implement mosquito control measures and that failure to do so is a violation of OAC Rule 3745-27-60(B)(8).

19. The Health Department and Ohio EPA conducted an inspection of the Property on July 21, 2005. Ohio EPA sent a NOV letter to Respondent dated August 1, 2005, citing the following violations:
 - a. Open dumping (see ORC Section 3734.03 and OAC Rule 3745-27-05(C));
 - b. Exceeding the basal area of 2,500 square feet allowed for a retail tire dealer (see OAC Rule 3745-27-60(B)(6)(a));
 - c. Failure to establish fire lanes between tires piles and tire piles and buildings (see OAC Rule 3745-27-60(B)(6)(d));
 - d. Failure to keep fire lanes free of combustible material (see OAC Rule 3745-27-60(B)(6)(e));
 - e. Failure to maintain a minimum of 15 feet between portable containers used for storage of scrap tires and buildings and structures owned or leased by the person storing the scrap tires (see OAC Rule 3745-27-60(B)(3)); and
 - f. Failure to implement mosquito controls (see OAC Rule 3745-27-60(B)(8)).

The Health Department sent a NOV letter to Respondent dated August 4, 2005, citing the following violations:

- a. Open dumping (see ORC Section 3734.03 and OAC Rule 3745-27-05(C));
- b. Operating without a license (see ORC Section 3734.81);
- c. Operating a scrap tire storage facility without obtaining registration (see OAC Rule 3745-27-61(A)(1));
- d. Exceeding the basal area of 2,500 square feet allowed for a retail tire dealer (see OAC Rule 3745-27-60(B)(6)(a)); and
- e. Failure to comply with the November 17, 2004 Board Orders.

The Health Department's NOV also notified Respondent of the obligation to implement mosquito control measures and that failure to do so is a violation of OAC Rule 3745-27-60(B)(8).

21. The Health Department and Ohio EPA conducted an inspection of the Property on November 9, 2005. Ohio EPA sent an NOV letter to Respondent dated November 25, 2005, citing the following violations:
 - a. Open dumping (see ORC Section 3734.03 and OAC Rule 3745-27-05(C));
 - b. Exceeding the basal area of 2,500 square feet allowed for a retail tire dealer (see OAC Rule 3745-27-60(B)(6)(a));
 - c. Failure to establish fire lanes between tires piles and tire piles and buildings (see OAC Rule 3745-27-60(B)(6)(d));
 - d. Failure to keep fire lanes free of combustible material (see OAC Rule 3745-27-60(B)(6)(e));
 - e. Failure to maintain a minimum of 15 feet between portable containers used for storage of scrap tires and buildings and structures owned or leased by the person storing the scrap tires (see OAC Rule 3745-27-60(B)(3)); and
 - f. Failure to implement mosquito controls (see OAC Rule 3745-27-60(B)(8)).
22. The Health Department and Ohio EPA conducted an inspection of the Property on February 21, 2006. Ohio EPA sent an NOV letter to Respondent dated March 10, 2006, citing the following violations:
 - a. Open dumping (see ORC Section 3734.03 and OAC Rule 3745-27-05(C));
 - b. Exceeding the basal area of 2,500 square feet allowed for a retail tire dealer (see OAC Rule 3745-27-60(B)(6)(a));
 - c. Failure to establish fire lanes between tires piles and tire piles and buildings (see OAC Rule 3745-27-60(B)(6)(d));
 - d. Failure to keep fire lanes free of combustible material (see OAC Rule 3745-27-60(B)(6)(e)); and
 - e. Failure to maintain a minimum of 15 feet between portable containers used for storage of scrap tires and buildings and structures owned or leased by the person storing the scrap tires (see OAC Rule 3745-27-60(B)(3)).
23. Scrap tires, if not properly managed, may become a breeding ground for mosquitos. Mosquitos are a common disease vector for St. Louis encephalitis, La Crosse encephalitis, Yellow Fever, West Nile Virus, and Dengue Fever.

24. In consideration of the existence of Respondent's scrap tire dump within the City of Mansfield, within 2,000 feet of a school, and within half a mile of a public water supply, and in consideration of a tire fire's potential to adversely impact a tributary of the Black Fork River which flows into the Mohican River, the Director has determined that the accumulation of scrap tires on Respondent's Property constitutes a danger to the public health or safety or to the environment.
25. 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."
26. ORC Section 3734.85 further provides, "...[i]f the Director removes the scrap tires from the Property, Respondent shall reimburse the Director, within thirty (30) days after written request, for the costs incurred by the Director for conducting the removal operation, storing at a scrap tire storage facility, storing or disposing at a scrap tire monocell or monofill facility, processing scrap tires so removed, the transporting of the 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."

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 thirty (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 licensed under ORC Section 3734.81; or
 - b. to such a facility in another state operating in compliance with the laws of that 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. Respondent shall obtain receipts from the registered transporter and the facility, indicating weight, volume or number of scrap tires received. Respondents shall forward such documentation to Ohio EPA within ten (10) days after completion of Order No. 3.
5. Respondent shall continue to comply with Order Nos. 3 and 4 above until such time as all scrap tires have been removed from the Property.

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 or the Property.

VIII. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Solid and Infectious Waste Management
Attn: DSIWM Unit Supervisor
347 North Dunbridge Road
Bowling Green, Ohio 43402

and to:

Mansfield/Ontario/Richland County Health Department.
555 Lexington Avenue
Mansfield, Ohio 44907
Attn: Environmental Health Director

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:

Ohio Environmental Protection Agency

Joseph P. Koncelik, Director