

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

David Green	:	<u>Director's Final Findings</u>
dba Dave's Paint Ball, LTD	:	<u>and Orders</u>
6370 West Pike	:	
Zanesville, Ohio 43701	:	

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mr. David Green dba Dave's Paint Ball, LTD, ("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 of the Property (as hereinafter defined) or the business identified as "Dave's Paint Ball, LTD" shall in any way alter the 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. The Riggle Family Trust, Charles R. Riggle and Betty M. Riggle, Trustees, is the owner of a 40-acre parcel of land identified in the records of the Licking County Recorder's Office by instrument number 200110240038099 recorded October 24, 2001, as permanent parcel number 33-103872-00-000 (hereinafter referred to as (the "Property"). The Property is located at 1005 County Line Road, Hopewell Township, Licking County, Ohio.
2. Respondent operated a business, Dave's Paint Ball, LTD, at the Property.

3. Respondent has stated that he operated his business at the Property under verbal agreement with Charles H. Riggle and Betty M. Riggle, Trustees of the Riggle Family Trust.
4. On February 6, 2001, the Director issued an approval to Respondent for Scrap Tire Beneficial Use Project (#STBU-4501), in accordance with OAC Rule 3745-27-78(F).
5. On March 9, 2006, the Director issued a final revocation to Respondent for Scrap Tire Beneficial Use Project (#STBU-4501), pursuant to OAC Rule 3745-27-78(L). Respondent did not appeal the final revocation.
6. 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).
7. The Property is neither licensed nor permitted as a scrap tire collection facility or a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27 and 3745-37.
8. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24).
9. 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."
10. 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."
11. 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."

12. Pursuant to OAC Rule 3745-27-78(D)(4), "[a]t any time when the use of the premises at which the whole scrap tires are placed changes in such a way that the authorizations...no longer apply, all whole scrap tires shall be removed from the premises within thirty days and delivered to an authorized destination, as described in paragraph (C) of rule 3745-27-56 of the Administrative Code. The scrap tires shall be transported in accordance with the requirements in rule 3745-27-54 of the Administrative Code."
13. On March 21, 2006, Ohio EPA conducted an inspection of the Property to determine if Respondent had begun removing scrap tires following the March 9, 2006 Director's final revocation of Respondent's scrap tire beneficial use authorization. At the time of inspection, Ohio EPA observed that approximately 3,200 scrap tires remained at the Property. By notice of violation ("NOV") dated April 11, 2006, Ohio EPA notified Respondent that subsequent to the revocation, the placement of scrap tires at the Property constitutes open dumping, and OAC Rule 3745-27-78(D) requires the scrap tires to be removed from the Property and delivered to an authorized destination within thirty days of the final revocation. The NOV also requested that Respondent Green respond in writing within fourteen days with a plan to abate the open dumping violation.
14. On April 26, 2006, Respondent contacted Ohio EPA via telephone. Respondent discussed selling the business and having the new owner move the tires to another location. Ohio EPA informed Respondent that he was required to remove and properly dispose of the scrap tires and to implement mosquito control measures during the removal process.
15. On May 16, 2006, Ohio EPA received a written response from Respondent. Respondent stated an intention to sell the business and have the new owner move the tires. Respondent asked for six months to find a new site and make other arrangements. However, Respondent Green then stated that if he were unable to accomplish this plan, he would begin to remove the tires himself, when he could. Ohio EPA found Respondent's proposed clean-up plan and schedule to be unacceptable.
16. On May 24, 2006, Ohio EPA conducted another inspection of the Property to determine if Respondent had removed scrap tires following the March 9, 2006 Director's final revocation of the scrap tire beneficial use authorization and the April 11, 2006 NOV. At the time of inspection, Ohio EPA observed that approximately 3,200 scrap tires remain at the Property. By NOV dated June 16, 2006, Ohio EPA notified Respondent that open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C); failure to implement mosquito control measures, in accordance with OAC Rule 3745-27-60(B)(8), creates a nuisance and a hazard to public health or safety and is a violation of OAC Rule 3745-27-60(B) and directed Respondent to immediately cause the removal and proper disposal of the

scrap tires. The NOV also informed Respondent of Ohio EPA's rejection of Respondent's proposed clean-up plan and schedule.

17. To date, Respondent has failed to remove and properly dispose of the scrap tires, and approximately 3,200 scrap tires remain open dumped at the Property as confirmed by Ohio EPA's inspection conducted on May 24, 2006.
18. 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.
19. Given the fact that the Property is located within one mile of the Hopewell Elementary School, U.S. Route 40 and Interstate 70,
 - disease-carrying mosquitos could impact children at the school, and
 - if a tire fire occurred at the Property, smoke could affect traffic along the two thoroughfares listed above.

Therefore, the Director has determined that the accumulation of scrap tires on the Property constitutes a hazard to the public health or safety or to the environment.

20. 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."
21. ORC Section 3745.85(A) further provides, "[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[.]"

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), to Ohio EPA within fourteen (14) days after each application of the registered pesticide, larvicide, or adulticide.
2. 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, partially buried scrap tires, and 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.
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 and shall forward such documentation to Ohio EPA within fourteen (14) days after completion of Order No. 2.
4. Respondent shall continue to comply with Order No. 1, 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 Enforcement Coordinator 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: "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 for the Property.

VIII. NOTICE

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

Ohio Environmental Protection Agency
Central District Office
Division of Solid and Infectious Waste Management
PO Box 1049
Columbus, OH 43216-1049
Attn: DSIWM Supervisor

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