



State of Ohio Environmental Protection Agency

COPY

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

October 23, 2006

CERTIFIED MAIL

Earnest and Mildred Bonzo
2201 Ashland Road
Greenup, KY 41144

Director's Final Findings & Orders

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

Sincerely,

Kimberly Reese
Systems Management Unit
Division of Solid & Infectious Waste Management

cc: Ed Gortner, CO, DSIWM
Jeff Hurdley, Ohio EPA, Legal
Steve Rine, SEDO, DSIWM

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director

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OHIO E.P.A.

BEFORE THE

OCT 23 2006

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

Earnest and Mildred Bonzo
2201 Ashland Road
Greenup, KY 41144

Director's Final Findings
and Orders

Respondents

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Earnest and Mildred Bonzo ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13, 3714.12, and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and their heirs and successors in interest liable under Ohio law. No change in ownership of the Respondents' property (as hereinafter defined) shall in any way alter Respondents' obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 3734 and 3714 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondents are the owners of several parcels of property in Proctorville, Lawrence County, Ohio. Parcel number 25-064-1300.000 is located adjacent to Shirkey

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

Donna Jackson 10-23-06

Street (herein Shirkey Street parcel) and parcel number 25-064.1100.000 is located near Private Road (herein Private Road parcel). Collectively, these parcels are referred to herein as the "Properties". Both Properties are also adjacent to Little Paddy Creek, a tributary of the Ohio River.

2. Respondents are "persons" as that term is defined in ORC Section 3734.01(G) and Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
3. The Properties are not permitted nor licensed as a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27 and 3745-37.
4. The Properties are not licensed as a construction and demolition debris facility in accordance with ORC Chapter 3714. and OAC Chapters 3745-400 and 3745-37.
5. OAC Rule 3745-27-01(O)(4)(a) defines "open dumping" as "... the final deposition of solid wastes on or into the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code, and Chapters 3745-27, 3745-29, 3745- 30, and 3745-37 of the Administrative Code."
6. OAC Rule 3745-27-01(O)(3) defines "open dump" as "...a site where solid wastes or untreated infectious wastes have been disposed without a license."
7. OAC Rule 3745-400-04(B) states that "No person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code."
8. On October 8, 2002, October 15, 2002, October 16, 2002, and October 30, 2002, Ohio EPA conducted inspections of the Properties and observed solid waste and construction and demolition debris illegally disposed. The solid waste included drums containing waste of unknown origin. This is a violation of the following:
 - a. ORC Section 3734.03 - No person shall dispose of solid wastes by open dumping or open burning.
 - b. OAC Rule 3745-27-05(C) - No person shall conduct, permit, or allow open dumping.
 - c. OAC Rule 3745-400-04(B) - No person shall conduct or allow illegal disposal of construction and demolition debris.

These violations were documented in a letter to Respondent Earnest Bonzo dated November 21, 2002.

9. On December 18, 2002, Ohio EPA sampled seven of thirteen drums of waste on the Private Road parcel. The sample results indicated that one drum of waste

tested hazardous for lead, pursuant to OAC Rule 3745-52-11. By letter dated May 5, 2003, Ohio EPA notified Respondent Earnest Bonzo of the sampling results and specified that the hazardous waste must be disposed of at a hazardous waste disposal facility, and that the solid waste must be disposed of at licensed solid waste disposal facility. Ohio EPA also notified the Respondent that because the wastes had been in contact with flood water from Little Paddy Creek, the Respondent was in violation of ORC Section 6111.04 for pollution to waters of the state. This is in addition to open dumping violations which had been previously cited.

10. By letter dated May 15, 2003, counsel for Respondent Earnest Bonzo indicated that his client was evaluating whether the drums were on his property and would be contacting counsel for Mr. Gary Riley, an adjacent landowner, to determine responsibility for removal of the drums.
11. By letter dated June 10, 2003, counsel for Respondent Earnest Bonzo indicated that his client does not believe he owns the property where the drums are located and does not believe he is responsible for the removal and appropriate disposal of the drums.
12. On August 15, 2003, Ohio EPA conducted an inspection of the Properties and observed that solid waste and construction and demolition debris remain illegally disposed, including the drums containing waste, one of which tested as hazardous for lead. The waste was placed both above ground and buried. Some of the waste was located in and adjacent to Little Paddy Creek. This is a violation of the following:
 - a. ORC Section 3734.03 - No person shall dispose of solid wastes by open dumping or open burning.
 - b. OAC Rule 3745-27-05(C) - No 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.
 - c. OAC Rule 3745-400-04(B) - No person shall conduct or allow illegal disposal of construction and demolition debris.
 - d. ORC Section 6111.04(A)(1) - No person shall cause pollution or place or cause to be placed any...wastes in a location where they cause pollution of any waters of the state.
 - e. OAC Rule 3745-1-04 - The following general water quality criteria shall apply to all surface waters including mixing zones...these waters shall be:
 - (A) Free from suspended solids or other substances that enter the waters as

a result of human activity...or that will adversely affect aquatic life; (B) Free from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation; (C) Free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance; (D) Free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone...

These violations were documented in a letter to Respondent Earnest Bonzo dated September 2, 2003.

13. By letter dated September 15, 2003, counsel for Respondent Earnest Bonzo again indicated that his client does not believe he owns the property where the drums are located and does not believe he is responsible for the removal and appropriate disposal of the drums.
14. On February 2, 2004, Respondents' environmental consultants removed and properly disposed of the drums on the Private Road parcel.
15. On September 14, 2004, Ohio EPA conducted an inspection of the property adjacent to Shirkey Street parcel and observed solid waste and construction and demolition debris illegally disposed. This is a violation of the following:
 - a. ORC Section 3734.03 - No person shall dispose of solid wastes by open dumping or open burning.
 - b. OAC Rule 3745-27-05(C) - No 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.
 - c. OAC Rule 3745-400-04(B) - No person shall conduct or allow illegal disposal of construction and demolition debris.

These violations were documented in a letter to Respondents dated October 12, 2004.

16. By letter dated October 19, 2004, counsel for Respondents replied to the October 12, 2004 Ohio EPA letter. Counsel indicated, among other things, that his clients had not engaged in the open dumping practices occurring on the Properties.

17. On April 12, 2006, Ohio EPA conducted an inspection of the Shirkey Street parcel and observed solid waste and construction and demolition debris illegally disposed. This is a violation of the following:
- a. ORC Section 3734.03 - No person shall dispose of solid wastes by open dumping or open burning.
 - b. OAC Rule 3745-27-05(C) - No 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.
 - c. OAC Rule 3745-400-04(B) - No person shall conduct or allow illegal disposal of construction and demolition debris.

These violations were documented in a letter to Respondents dated May 4, 2006.

18. By letter dated May 15, 2006, counsel for Respondents replied to the May 4, 2006 Ohio EPA letter. Counsel requested information regarding the location of the open dumping on Respondents' property as well as other documentation.
19. On July 11, 2006, Ohio EPA conducted an inspection of the Shirkey Street parcel and observed solid waste and construction and demolition debris illegally disposed. This is a violation of the following:
- a. ORC Section 3734.03 - No person shall dispose of solid wastes by open dumping or open burning.
 - b. OAC Rule 3745-27-05(C) - No 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.
 - c. OAC Rule 3745-400-04(B) - No person shall conduct or allow illegal disposal of construction and demolition debris.

These violations were documented in a letter to Respondents dated July 27, 2006.

20. On September 6, 2006, Ohio EPA met with Respondents at the Shirkey Street parcel. Ohio EPA observed solid waste and construction and demolition debris illegally disposed. This is a violation of the following:

- a. ORC Section 3734.03 - No person shall dispose of solid wastes by open dumping or open burning.
- b. OAC Rule 3745-27-05(C) - No 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.
- c. OAC Rule 3745-400-04(B) - No person shall conduct or allow illegal disposal of construction and demolition debris.

The Respondents indicated to Ohio EPA that they would be willing to excavate, transport, and dispose all of the existing solid waste and construction and demolition debris at an appropriate disposal facility.

V. ORDERS

Respondent shall achieve compliance with ORC Chapters 3734. and 3714. and the rules promulgated thereunder according to the following compliance schedule:

1. Within ninety (90) days after the effective date of these Orders, Respondents shall delineate the depth and lateral extent of waste disposal on the Shirkey Road parcel (number 25-064-1300.000) in Lawrence County, Ohio. Respondents shall use wooden survey stakes placed at a minimum of 50 foot intervals to delineate the lateral extent of waste disposal.
2. Respondents shall, at least seven (7) days prior to excavating waste at the Shirkey Road parcel, notify Ohio EPA Southeast District Office (DSIWM Supervisor) in writing of the date that the waste removal will begin.
3. Within one hundred and eighty (180) days after the effective date of these Orders, Respondents shall excavate, transport, and dispose all of the existing solid waste and construction and demolition debris unlawfully disposed of at the Shirkey Road parcel to a licensed solid waste landfill or transfer facility.
4. Respondents shall, within thirty (30) days after completing the waste removal specified in Order No. 3 above, appropriately grade, seed, and mulch the areas of the Properties disturbed by the waste removal to form a dense vegetative cover in order to protect Little Paddy Creek from storm water runoff.
5. Within fourteen (14) days after completing Order Number 3 above, Respondents shall send copies of the disposal receipts for the solid waste and construction and demolition debris, indicating weight or volume of wastes disposed, to the Ohio EPA Southeast District Office - attention DSIWM Supervisor.

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 Compliance Monitoring and 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 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: "We 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 the Respondents.

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
2915 Front Street
Logan, OH 43138
Attn: 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. Except for the right to seek civil or administrative penalties against Respondents for violations specifically cited in these Orders, which right Ohio EPA does not waive, 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. TOLLING AGREEMENT

Respondents agree that the time period following the effective date of these Orders and until the completion of the Respondents' obligations under Section V. Of these Orders will not be included in computing the time periods under the statute of limitations set forth in ORC Section 3745.31. Respondents agree not to assert, plead or raise in any fashion, in any such action hereafter initiated or maintained by the State of Ohio, whether by answer, motion or otherwise, any defense or avoidance based on (a) the running of the statute of limitations during the aforementioned period; or (b) laches or other principles concerning the timeliness of commencing a civil action based upon the failure of the State of Ohio to

assert such claims during the aforementioned period; and the statute of limitations shall be tolled during and for such period.

XIV. EFFECTIVE DATE

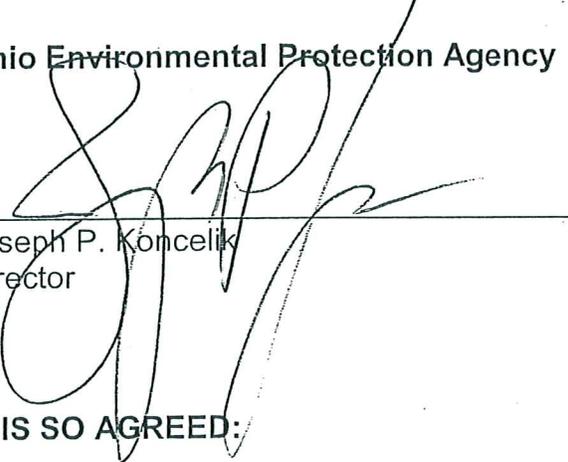
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XV. 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

IT IS SO AGREED:

Earnest Bonzo



Signature



Date



Printed or Typed Name

Mildred Bonzo



Signature



Date



Printed or Typed Name