State of Ohio Environmental Protection Agency

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

December 1, 2008

James C. McKenzie
Yvette J. Capps
4809 Leona Avenue, S.W.
Navarre, OH 44662

Re: Director's Final Findings & Orders

Dear Sir or Madam:

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

You are hereby notified that this action of the Director of Environmental Protection (Director) is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Appeals Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of $70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, Ohio 43215

Sincerely,

Kimberly Reese

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

Enclosure: Director's Final Findings and Orders

cc: Ed Gortner, CO, DSIWM
Jeff Hurdley, OEPA, Legal
Lynn Sowers, NEDO, DSIWM
Stark County Health Department

OHIO E.P.A.
DEC - 1 2008
ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

James C. McKenzie
Yvette J. Capps
4809 Leona Avenue, S.W.
Navarre, Ohio 44662

Respondents

Director's Final Findings
and Orders

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

By: Date: 12-1-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to James C. McKenzie and Yvette J. Capps (collectively the "Respondents") 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

These Orders shall apply to and be binding upon Respondents 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 Respondents' responsibilities under these Orders.

III. DEFINITIONS

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

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondents are the owners of multiple tracts of land identified in the records of the Stark County Recorder's office by warranty deed recorded May 6, 1992 in volume 1214, pages 950 through 952, and further identified by the Stark County Auditor as parcel numbers 13-00226, 13-10248, and 13-10249 (collectively the "Property"). The Property is located in the Northwest Quarter of Section 23, Stark County, Canton Township, Ohio.

2. Respondents are each 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).

3. There are currently more than 100 partially buried and surficial scrap tires illegally disposed on the Property.

4. The Property is not licensed or permitted as a scrap tire collection facility, a solid waste disposal facility, a junk yard, or any type of legitimate recycling facility.

5. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).

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. The open dumping of scrap tires is a violation of ORC § 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."

8. 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."

9. OAC Rule 3745-27-60(B) provides that "the 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 fire hazard unless the tires are stored in accordance with [the standards set forth within OAC Rule 3745-27-60(B)(1) through (11)]."

10. 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.

11. Mr. Silas Austin, Jr. was found to be the person responsible for open dumping of scrap tires and other solid waste on the Property as well as nearby parcels.

12. On July 12, 1988 the Stark County Combined Board of Health issued Board Orders to Silas Austin, Jr. for creating a nuisance by causing the open dumping of scrap tires and other solid waste. The Board Order required Mr. Austin to abate the nuisance by removing all waste within 30 days.

13. On November 18, 1988, a Judgment Entry was agreed to and filed in the Stark County Court of Common Pleas which required Mr. Austin to immediately cease additional disposal of solid waste as well as remove and legally dispose of all scrap tires and appliances within 60 days.

14. Mr. Austin Jr. died on or about July 13, 1994 and did not complete the removal and disposal of scrap tires prior to his death. Thus, in accordance with ORC 3734.85 Respondents, as the owners of the Property, are responsible for removing and disposing of scrap tires remaining on the Property.

15. On July 20, 2004, Ohio EPA inspected the Property and found 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) for the improper storage of scrap tires.

    This inspection was documented in a Notice of Violation ("NOV") from Ohio EPA to Respondent James McKenzie dated August 12, 2004.

16. On March 2, 2005, the Stark County Board of Health issued Orders that required Respondents to remove and legally dispose of all scrap tires on the Property within 30 days.

17. On July 13, 2005, the Stark County Health Department inspected 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.

    This inspection was documented in an NOV from Stark County Health Department to Respondents dated July 15, 2005.

18. On July 29, 2008, the Ohio EPA inspected 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)(7)(e) for failure to store scrap tires in a manner that maintains emergency vehicle access.

d. OAC Rule 3745-27-60(B)(11) for failure to maintain fire breaks free of combustible material.

This inspection was documented in an NOV from Ohio EPA to Respondent James McKenzie dated August 1, 2008.

19. To date, the Ohio Department of Health has confirmed two cases of West Nile Virus in Stark County.

20. Given the documented proximity of the scrap tire pile to Canton and sensitive sub populations such as nursing homes and elementary, middle, and high schools; the confirmed presence of West Nile Virus in the County; the potential that a tire fire could obscure major transportation routes such as Interstate Route 77 and U.S. Route 30; and the adverse impact that a tire fire could have on the waters of the state, 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, the director 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 further provides, "If 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 monofill 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

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(C). Respondents shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3) to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.

2. Upon the effective date of these Orders, Respondents shall cease acceptance and disposal of all solid wastes, including scrap tires, at the Property and shall comply with ORC Chapter 3734. and OAC Chapter 3745-27.

3. Not later than thirty (30) days after the effective date of these Orders, Respondents shall establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B).

4. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and buried scrap tires, and shall arrange for their transportation, by a registered transporter, to a scrap tire storage, monocell, monofill, or recovery facility licensed under ORC Section 3734.81 in Ohio, 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.

5. Respondents shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume and number of scrap tires received. Respondent shall forward such documentation to Ohio EPA Northeast District Office on a monthly basis by the 10th day of each month.

6. Respondents shall submit monthly progress reports until all scrap tires are removed from the Property. Respondents' monthly progress reports, due to Ohio EPA Northeast District Office by the 20th day of each month, shall summarize Respondents' efforts to comply with the requirements of these Orders. The first progress report shall be delivered to Ohio EPA Northeast District Office no later than the 20th day of the month immediately following the month that these Orders become effective.

7. Respondents shall comply with Order Nos. One (1) and Three (3) above until such time as all scrap tires have been removed from the Property unless otherwise provided by Ohio EPA in writing.

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 Ohio EPA's Division of Solid and Infectious Waste Management Enforcement Coordinator 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 from Respondents: "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 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, Respondents or the 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 or the Property.

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.

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.

X. NOTICE

All documents required to be submitted by Respondents under to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969

and to:

Stark County Health Department
3951 Convenience Circle, N.W.
Canton, OH 44718-2660

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

XI. 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 Respondents 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 Respondents to perform additional activities pursuant to ORC Chapter 3734. or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XII. 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:

Chris Korleski, Director