



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

August 20, 2018

McKinley Industries, LLC
1300 Oak Hill Avenue
Youngstown, OH 44507

**Re: McKinley Industries, LLC
Director's Final Findings and Orders (DFFO)
DFFO
Construction & Demolition Debris
Mahoning County
CDDL019347**

Subject: Final Findings and Orders of the Director

Ohio EPA AUG 20 '18
Entered Director's Journal

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for McKinley Industries, LLC.

If you have any questions, please contact Troy Harter at (614) 644-3037.

Sincerely,

Greg Nichols, Administrative Processing Unit
Division of Materials & Waste Management

Enclosure

ec: Carl Mussenden, DMWM, CO
Bruce McCoy, DMWM, CO
Lynn Sowers, DMWM, NEDO
Jerry Parker, DMWM, NEDO
Troy Harter, Legal
Teri Finfrocl, Legal

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

McKinley Industries, LLC	:	<u>Director's Final</u>
1300 Oak Hill Avenue	:	<u>Findings and Orders</u>
Youngstown, OH 44507	:	

Respondent

I. JURISDICTION

Ohio EPA AUG 20 '18
Entered Directors Journal

These Director's Final Findings and Orders ("Orders") are issued to McKinley Industries, LLC ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3714.12, 3734.13, 3734.22, 3734.85, and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facility (as herein after 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 Chapters 3714 and 3734 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. On May 31, 2017, Respondent McKinley Industries, LLC, purchased 26.91 acres of land identified by the Mahoning County Auditor's Office as parcel I.D. 53-012-0-116.00-0 ("the Property").
2. Respondent McKinley Industries, LLC, is an active domestic, for-profit, limited liability company listed on the Ohio Secretary of State's website. The Articles of Organization were filed on December 26, 2012.

3. The term "owner" or "property owner" is defined in Ohio Administrative Code ("OAC") Rule 3745-400-01(P)(2) and OAC Rule 3745-27-01(O)(7). The Property is located at 4136 East Dennick Avenue, Youngstown, Mahoning County, Ohio.
4. In accordance with ORC Sections 3714.01(E) and 3734.01(N), "Facility" means any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris and solid waste.
5. Respondent is the "operator" or "facility operator" as that term is defined in OAC Rule 3745-400-01(C)(5) and OAC Rule 3745-27-01(O)(5).
6. Respondent is a "person" as that term is defined in ORC Sections 3714.01(H) and 3734.01(G) and OAC Rules 3745-400-01(P)(1) and 3745-27-01(P)(3).
7. The previous owner/lessee illegally disposed of an estimated 11,502 cubic yards of asphalt shingles and other miscellaneous construction and demolition debris ("C&DD") on the Property as well as open dumped an estimated 1,000 scrap tires and miscellaneous solid waste on the Property, in violation of OAC Rules 3745-400-04(B) and 3745-27-05(C), respectively.
8. The Property is neither licensed nor permitted as a C&DD disposal facility, a scrap tire collection facility or a solid waste disposal facility.
9. On October 5, 2016, Ohio EPA issued Director's Final Findings and Orders ("October 5, 2016 Orders") to the previous owner/lessee to remove and dispose of the shingles and other C&DD and all of the solid waste, including scrap tires.
10. On June 22, 2017, Respondent contacted Ohio EPA's Northeast District Office, Division of Materials and Waste Management ("NEDO-DMWM"), to inform Ohio EPA that it had purchased the Property.
11. On July 28, 2017, Respondent submitted a remediation plan to Ohio EPA, NEDO-DMWM for review.

C&DD Findings

12. "Construction and demolition debris" is defined in ORC Section 3714.01(C) as "those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways."
13. Pursuant to OAC Rule 3745-37-01(C), "No person shall operate or maintain a construction and demolition debris facility without a construction and demolition debris facility operating license issued by the licensing authority except as otherwise specified in this rule."

14. As defined in OAC Rule 3745-400-01(I)(2): "Illegal disposal" means "the disposal of construction and demolition debris at any place other than a construction and demolition debris disposal facility operated in accordance with Chapter 3714. of the Revised Code, and Chapters 3745-400 and 3745-37 of the Administrative Code or a solid waste disposal facility operated in accordance with Chapter 3745-27 of the Administrative Code, and licensed in accordance with Chapter 3745-37 of the Administrative Code, or as otherwise authorized by this Chapter."
15. OAC Rule 3745-400-04(B) states that "[n]o person shall conduct or allow illegal disposal of construction and demolition debris."

Solid Waste/Scrap Tire Findings

16. According to ORC Section 3734.01(E), 'Solid wastes' "means such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations . . . and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. 'Solid wastes' does not include any material that is an infectious waste or a hazardous waste."
17. Pursuant to ORC 3734.02(C), ". . . [N]o person shall establish a new solid waste facility ... or modify an existing solid waste facility ... without submitting an application for a permit with accompanying detail plans, specifications, and information regarding the facility and method of operation and receiving a permit issued by the director..."
18. Pursuant to ORC 3734.05(A)(1), ". . . [N]o person shall operate or maintain a solid waste facility without a license issued under this division by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code."
19. Pursuant to OAC Rule 3745-37-01(A), "No person shall conduct municipal solid waste landfill . . . operations without possessing a . . . valid license . . . as required by Chapter 3734. of the Revised Code and the Administrative Code rules adopted thereunder. Each license shall be obtained from . . . the director, if the director has assumed the licensing function for that health district."
20. OAC Rule 3745-27-01(O)(4)(b) defines "open dumping" as including "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."

21. 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."
22. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).
23. The open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C), which respectively state: ... "[n]o person shall dispose of solid wastes by ... open dumping" and "[n]o 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."
24. OAC Rule 3745-27-60(B) provides the storage of scrap tires in any amount outside or inside a trailer, vehicle, or building is deemed a nuisance, a hazard to public health or safety, or fire hazard unless the scrap tires are stored in accordance with paragraphs (B)(1) through (B)(11) of this rule.
25. OAC Rule 3745-27-60(C) provides guidelines for mosquito control when scrap tires are stored outdoors, including application of pesticide and/or larvicide and prevention of the accumulation of liquid inside the tires.
26. In accordance with OAC Rule 3745-27-60(D), the owner or operator shall apply pesticide or larvicide within twenty-four hours or the next business day upon inspection and written notification by Ohio EPA or the approved health district after discovery of the presence of adult mosquitoes or mosquito larvae.
27. Violations cited by Ohio EPA while the Property was under the previous ownership included the following:
 - a. ORC Section 3714.06(A) - operating a C&DD facility without a license;
 - b. OAC Rule 3745-37-01(C) - operating or maintaining a C&DD facility without a C&DD facility operating license issued by the licensing authority;
 - c. OAC Rule 3745-400-04(B) - conducting or allowing illegal disposal of Cⅅ
 - d. ORC Section 3734.02(C) – operating a solid waste facility without a permit issued by the director;

- e. ORC Section 3734.05(A)(1) and OAC Rule 3745-37-01(A) - operating a solid waste facility without a license issued by the director; and
 - f. ORC Section 3734.03 and OAC Rule 3745-27-05(C) – conducting or permitting open dumping of solid waste;
 - g. OAC Rule 3745-27-60(B)(7)(e) – failure to maintain sufficient fire lanes to allow emergency vehicles access at all times around scrap tire piles; and
 - h. OAC Rule 3745-27-60(C)(1) - (C)(3) – failure to maintain mosquito control measures.
28. ORC Section 3734.85(A) 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.”
29. As stated in the October 6, 2016 Orders, the Director has determined that the accumulation of the estimated 11,502 cubic yards of asphalt shingles and 1,000 scrap tires on the Property constitute a danger to the public health or safety or to the environment, given:
- a. The potential harm caused by a fire consuming the shingles and tires and causing dense smoke and fire residuals;
 - b. The potential harm caused by approximately 1,000 scrap tires open dumped on the Property that provide a breeding ground for mosquitoes, as the tires have not been kept dry or treated with applications of pesticide or larvicide;
 - c. The proximity of the Property to Crab Creek, which borders the Property on the east and is a tributary to the Mahoning River which is approximately two miles to the south;
 - d. The proximity of the Property to 50 private drinking wells, which are located

within a two-mile radius, with the closest located approximately 800 feet from the southern boundary of the Property; and

- e. Approximately 15,000 people reside in northeastern Youngstown and are within a two-mile radius of The Property.
30. On July 21, 2017 and September 26, 2017, representatives of Ohio EPA's Northeast District Office, Division of Materials and Waste Management ("NEDO-DMWM") met with Respondent and conducted a site visit of the Property. During this visit, Ohio EPA observed that violations are ongoing at the Property. Respondent indicated a willingness to remove the shingles, scrap tires, and additional solid waste and C&DD.
31. As of the most recent visit to the Property on March 19, 2018, approximately 11,502 cubic yards of asphalt shingles and other miscellaneous C&DD remained illegally disposed. In addition, approximately 900 scrap tires remained open dumped on the Property. Approximately 250 tires were placed in a semi trailer. Mosquito control measures had not been implemented. Furthermore, approximately 250 cubic yards of material that appeared to be from a foundry operation had been deposited on the Property in a manner that constitutes open dumping of solid waste.

V. ORDERS

The Director hereby issues the following Orders:

1. Upon the effective date of these orders, Respondent shall secure the Property to prevent illegal disposal of additional C&DD and open dumping of additional solid waste including scrap tires.
2. Not later than ten (10) days after 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(C) and (D), including but not limited to removal of liquids from scrap tires and storing scrap tires in a manner where water does not accumulate in the scrap tires. Scrap tires shall be kept free of water at all times prior to removal from the Property for proper disposal.
3. If, upon inspection and written notification, Ohio EPA or the approved health district discover the existence of mosquitoes or larvae, Respondent shall, within twenty-four hours, apply an adulticide which is registered for use for mosquito control by the Ohio Department of Agriculture. The application shall be according to the manufacturer's or formulator's recommendations. Within seven (7) days of application, Respondent shall provide Ohio EPA records indicating the trade name of the adulticide or larvicide, the date and time of the application, and the name of

the person who applied the treatment.

4. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall have removed or caused the removal of all scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and all partially or completely buried scrap tires, and arranged 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 the state in which it is located that is authorized to accept scrap tires; or
 - c. To any other solid waste disposal facility in another state that is operating in compliance with the laws of that state that is authorized to accept scrap tires.

Scrap tire removal shall occur, at a minimum, in accordance with the following schedule:

- a. Within thirty (30) days after the effective date of these Orders, Respondent shall remove, transport, and properly dispose of at least 250 scrap tires.
 - b. Within sixty (60) days after the effective date of these Orders, Respondent shall remove, transport, and properly dispose of at least 250 additional scrap tires.
 - c. Within ninety (90) days after the effective date of these Orders, Respondent shall remove, transport, and properly dispose of at least 250 additional scrap tires.
 - d. Within one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove, transport, and properly dispose of all remaining scrap tires.
5. Respondent shall provide receipts from the registered transporter and the disposal facility, indicating weight, volume or number of scrap tires received. Respondent shall forward such documentation to Ohio EPA NEDO-DMWM, at the address found in these Orders under Section IX. Notice, within fourteen (14) days after each delivery of scrap tires to a facility that meets the criteria specified in Order No. 4 above.

6. In lieu of utilizing a registered scrap tire transporter specified in Order No. 4 above, Respondent may transport the scrap tires from the Property to the destinations specified in Order No. 4 above. In accordance with OAC Rule 3745-27-54 (A)(2)(m), Respondent shall only utilize vehicles owned or leased by the Respondent to transport scrap tires from the Property. Respondent shall use shipping papers in accordance with OAC Rule 3745-27-57 and shall provide Ohio EPA with copies of the completed shipping papers, and disposal receipts from the disposal facility, indicating weight, volume or number of scrap tires received, within fourteen (14) days after each delivery of scrap tires to the facilities specified in Order No. 4 above.
7. Not later than one hundred eighty (180) days after the effective date of these Orders, Respondent shall remove and properly dispose of all remaining solid waste at a licensed solid waste disposal facility.
8. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of solid waste disposed. Respondent shall forward such documentation to Ohio EPA's NEDO-DMWM within fourteen days of removal and disposal according to Order No. 4 above.
9. Respondent shall remove the shingles and miscellaneous C&DD and arrange transportation of these materials to a licensed C&DD disposal facility or a licensed solid waste facility for disposal. Alternatively, Respondent may arrange for transportation of these materials to a legitimate C&DD recycling or processing facility where the materials will be recycled into a commodity for use or exchange in a legitimate market or for use in a beneficial manner. The rate of proper C&DD removal for disposal and/or recycling shall occur, at a minimum, in accordance with the following schedule:
 - a. By no later than January 1, 2019, 1,400 cubic yards (approximately 512 tons).
 - b. By no later than July 1, 2019, an additional 1,400 cubic yards (approximately 512 tons).
 - c. By no later than January 1, 2020, an additional 1,400 cubic yards (approximately 512 tons).
 - d. By no later than July 1, 2020, an additional 1,400 cubic yards (approximately 512 tons).
 - e. By no later than January 1, 2021, an additional 1,400 cubic yards (approximately 512 tons).

- f. By no later than July 1, 2021, an additional 1,400 cubic yards (approximately 512 tons).
 - g. By no later than January 1, 2022, an additional 1,400 cubic yards (approximately 512 tons).
 - h. By no later than July 1, 2022, all remaining shingles and miscellaneous C&DD.
10. Respondent shall keep a daily log documenting all loads of waste/debris removed from the Property (Attachment A). This daily log shall be available to Ohio EPA during inspections and upon request.
11. Respondent shall obtain receipts from all disposal or legitimate recycling facilities that receive shingles and miscellaneous C&DD from the Property as part of the removal schedule specified in Order No. 9 above. These receipts shall indicate weight or volume of shingles and miscellaneous C&DD received by the facility. Respondent shall forward such documentation to Ohio EPA at the address found in these Orders under Section IX., Notice, within fourteen (14) days after each six-month shingle and miscellaneous C&DD removal and disposal milestone according to Order No. 9 above.
12. By entry into these Orders, Respondent agrees to grant access to Ohio EPA, its representatives and contractors for the purpose of removing and disposing of all scrap tires, solid waste and C&DD from the Property and spraying for mosquitoes in the event that Respondent fails to comply with any deadline presented in Orders 4 and 9. Respondent agrees to grant to Ohio EPA, its contractors, employees, agents, representatives, or assigns, the right to full access over, under, across and through the Property, and to any reasonable or necessary right-of-way access on abutting parcels of land owned by Respondent, for all purposes that Ohio EPA may deem reasonable, necessary, or appropriate to address the conditions related to the open dumping of scrap tires, solid waste, and C&DD and for all purposes necessary or appropriate, at Ohio EPA's discretion, to remove, transport, and dispose or process any scrap tires, solid waste, and C&DD located on the Property. At the conclusion of the cleanup of all scrap tires, solid waste, and C&DD from the Property, all improvements shall become the property of the Respondent.
13. Respondent hereby agrees to hold the Director; Ohio EPA; and Ohio EPA's employees, authorized representatives, and contractors harmless for actions taken in accordance with these Orders, and for any action not taken at the Property.
14. Respondent hereby agrees to relinquish any claim of ownership interest in any scrap tires, solid waste, or C&DD that may be removed from the Property by Ohio EPA if Respondent fails to comply with these Orders.

15. Should Ohio EPA utilize public funds for any remediation or closure activity at the Property, Respondent agrees that the Director may recover costs or may record those costs incurred while performing those activities, including costs for labor, materials, and contract services, at the office of the Mahoning County Recorder with the Property's deed. Respondent agrees that the costs so recorded shall constitute a lien against the Property until discharged. Respondent agrees not to dispute the validity of any lien filed in accordance with these Orders, either in law or equity.

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 Materials and 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: "McKinley Industries, LLC certifies that the information contained in or accompanying this certification is true, accurate and complete."

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 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 Respondent.

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 Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Materials and Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087-1924
Attn: Unit supervisor, DMWM

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

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. Ohio EPA and Respondent each reserve all other rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders. Ohio EPA specifically reserves all rights to recover public funds, if expended to address conditions related to the Property by placing a lien on the Property in accordance with ORC Section 3734.85.

XII. WAIVER

Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent 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:

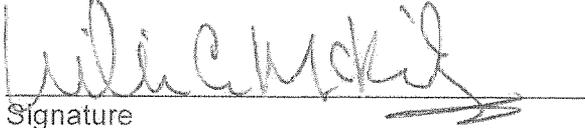
Ohio Environmental Protection Agency



Craig W. Butler
Director

IT IS SO ORDERED AND AGREED:

McKinley Industries, LLC


Signature

6/28/2018
Date

William A. McKinley
Printed or Typed Name


Title