



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

September 26, 2019

Marlin Rogers
6040 Farabee Road
Zanesville, Ohio 43701

**Re: Brown and Shaw Open Dump
Director's Final Findings and Orders (DFFO)
DFFO
Municipal Solid Waste Landfills
Muskingum County
MSWL019190**

Subject: Final Findings and Orders of the Director

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Marlin Rogers / Brown and Shaw Open Dump.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeri Main".

Jeri Main, Administrative Professional Unit
Division of Materials & Waste Management

Enclosure

ec: Kelly Jeter, DMWM, CO
Carl Mussenden, DMWM, CO
Bruce McCoy, DMWM, CO
Dale Warner, DMWM, SEDO
Joe Goicochea, DMWM, SEDO
Troy Harter, Legal
Teri Finfrock, Legal

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

| | | |
|------------------------|---|----------------------------------|
| Marlin Rogers | : | <u>Director's Final Findings</u> |
| 6040 Farabee Road | : | <u>and Orders</u> |
| Zanesville, Ohio 43701 | : | |

Respondent

Ohio EPA SEP 26 '19
Entered Directors Journal

I. JURISDICTION

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

II. PARTIES

These Orders shall apply to and be binding upon Respondent 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 Respondent's 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. Respondent is the current owner of a parcel of land located at 6040 Farabee Road, Zanesville, Ohio 43701, which is identified by the Muskingum County Auditor as Parcel Number 62-36-01-17-000 ("Property").
2. Respondent is a "person" as that term is defined in ORC § 3734.01(G), and in Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
3. There are currently an estimated 200 cubic yards of solid waste commingled with scrap tires and construction and demolition debris dumped on the Property.

4. The Property is neither licensed nor permitted as a solid waste disposal facility, a junk yard, or any type of legitimate recycling facility.
5. OAC Rule 3745-27-01(O)(4) 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 3745-27-05(C) states "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.
7. Respondent is the owner of an "open dump", as that term is defined in OAC Rule 3745-27-01(O)(3), in violation of ORC §§ 3734.03 and OAC Rule 3745-27-05(C).
8. Ohio EPA inspected the Property and observed solid waste, construction and demolition debris, and scrap tires commingled on the Property. By letters dated November 27, 2017, February 23, 2018, May 10, 2018, and September 28, 2018, Ohio EPA cited the Respondent for being in violation of ORC § 3734.03 and OAC Rule 3745-27-05(C) for open dumping solid waste.

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 cease acceptance of all solid waste and construction and demolition debris at the Property.
2. Upon the effective date of these Orders, Respondent shall complete removal or cause the removal of all commingled solid waste and construction and demolition debris from the Property and dispose of all commingled solid waste and construction and demolition debris at a licensed solid waste disposal facility. Removal shall occur at the following rate:
 - a. By July 1, 2020, Respondent shall have completed removal and disposal of at least 50 cubic yards;
 - b. By January 1, 2021, Respondent shall have completed removal and disposal of at least an additional 50 cubic yards (100 cubic yards total);
 - c. By July 1, 2021, Respondent shall have completed removal and disposal of at least an additional 50 cubic yards (150 yards total); and

- d. By January 1, 2022, Respondent shall have completed removal and disposal of all remaining commingled solid waste and construction and demolition debris.
3. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of commingled solid waste and construction and demolition debris disposed in accordance with Order No. 2. Respondent shall forward such documentation to Ohio EPA Southeast District Office no later than ten (10) days after each deadline identified in Order No. 2 (e.g. July 11, 2020, January 11, 2020, etc.) until receipts documenting that all commingled solid waste and construction and demolition debris has been lawfully disposed have been provided to Ohio EPA.
4. Respondent may request an extension to the deadlines identified in Order No. 2 due to temporary, unforeseen, and uncontrollable circumstances. The request shall be in writing to the Director and include a description of the circumstances for which the extension is requested. An extension granted at the discretion of the Director shall be in writing and effective on the date entered into the Director's journal, in accordance with **Section IX. Modifications**.

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 Ohio EPA's Chief, 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 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 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, Respondent 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 Respondent 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.

X. NOTICE

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

Ohio Environmental Protection Agency
Southeast District Office
Division of Materials and Waste Management
2195 Front Street.
Logan, Ohio 43138

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 actions, 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, Respondent consents to the issuance of these Orders and agree to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondent 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 Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waive 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 agrees 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

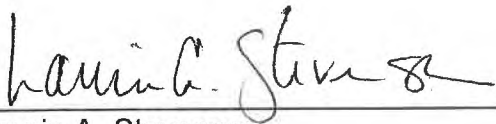
The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

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 AND AGREED:

Ohio Environmental Protection Agency



Laurie A. Stevenson
Director

IT IS SO AGREED:



Marlin Rogers