

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of

James Osborn : Director's Final Findings
8537 State Route 132 : and Orders
Pleasant Plain, Ohio 45162 :

Respondent

I. JURISDICTION

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

II. PARTIES

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) 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 used in ORC Chapters 3714. and 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns property identified as Parcel Numbers 18332760052, 18332760051, 18332770060, and 18332510120 located behind Main Street, Butlerville, Warren County (the "Property").
2. Respondent is a "person" as that term is defined in ORC §§ 3714.01, 3734.01(G), and in Ohio Administrative Code ("OAC") Rules 3745-27-01(P)(3) and 3745-400-01(P)(1).
3. There are an estimated 100 - 200 scrap tires improperly stored, and approximately 40 cubic yards of commingled construction and demolition debris on the Property.

4. 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."
5. Scrap tires are included in the definition of "solid wastes" under ORC § 3734.01(E) and OAC Rule 3745-27-01(S)(23).
6. ORC Section 3714.01(C) states, "'Construction and demolition debris means those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any physical structure that is built by humans, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways. 'Construction and demolition debris' includes particles and dust created during demolition activities. 'Construction and demolition debris' does not include materials identified or listed as solid wastes or hazardous waste pursuant to Chapter 3734. of the Revised Code and rules adopted under it; materials from mining operations, nontoxic fly ash, spent nontoxic foundry sand, and slag; or reinforced or nonreinforced concrete, asphalt, building or paving brick, or building or paving stone that is stored for a period of less than two years for recycling into a usable construction material."
7. The Property where the scrap tires are disposed is not validly registered, permitted or licensed as a scrap tire collection facility, a scrap tire storage facility, a scrap tire recovery facility, a scrap tire monocell or monofill, or a solid waste disposal facility, nor has any application been submitted.
8. OAC Rule 3745-400-04(B) states, "No person shall conduct or allow illegal disposal of construction and demolition debris."
9. OAC Rule 3745-27-60(C)(1)(b) states, "Anyone storing scrap tires shall maintain mosquito control as follows... Store scrap tires such that water does not accumulate in scrap tires or containers. Tires shall be kept free of water at all times."
10. In the course of investigating complaints, Ohio EPA conducted inspections of the Property on July 12, 2018, October 29, 2018, January 24, 2019, March 26, 2019, May 16, 2019, July 23, 2019, and September 11, 2019, and documented the following violations in letters dated July 27, 2018, November 6, 2018, February 6, 2019, April 2, 2019, June 3, 2019, August 6, 2019, and September 17, 2019:
 - OAC Rule 3745-400-04(B) for conduct or allowing the illegal disposal of construction and demolition debris, and
 - OAC Rule 3745-27-60(C)(1)(b) for failing to maintain stored scrap tires free from water at all times.

V. ORDERS

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

Scrap Tire Removal

1. Upon the effective date of these Orders, Respondent shall conduct and maintain mosquito control at the Property until all scrap tires have been removed, in accordance with OAC Rule 3745-27-60(C).
2. Not later than ten (10) days after the effective date of these Orders, Respondent shall properly store and maintain the storage of scrap tires such that the scrap tires always remain free of water, in accordance with OAC Rule 3745-27-60(C)(1)(b).
3. Not later than thirty (30) days after the effective date of these Orders and every thirty (30) days thereafter, Respondent shall remove and properly dispose of at least fifty (50) 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 arrange 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

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.
4. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall have removed and properly disposed of all remaining scrap tires from the Property.
5. Respondent 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 Southwest District Office on a monthly basis by the 10th day of each month, until receipts documenting that all scrap tires have been removed from the Property, lawfully transported, and disposed have been provided to Ohio EPA.

Construction & Demolition Debris Removal

6. Not later than thirty (30) days after the effective date of these Orders, Respondent shall remove and properly dispose all construction and demolition debris from the Property.

7. Respondent shall obtain receipts from all disposal or legitimate recycling facilities that receive C&DD from the Property. Respondent shall forward such documentation to Ohio EPA Southwest District Office within 60 days of the effective date of these Orders. The receipts shall indicate the volume or weight of the C&DD disposed or recycled.

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: "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, the 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 the Respondent or the Property.

IX. NOTICE

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

Ohio Environmental Protection Agency
Southwest District Office,

Division of Materials and Waste Management
401 East Fifth Street
Dayton, Ohio 45402

Attn: Unit Supervisor, DMWM

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

X. 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 the 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 the Respondent to perform additional activities pursuant to ORC Chapters 3714 and 3734. or any other applicable law in the future. Nothing herein shall restrict the right of the 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 the 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.

XI. 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:



Laurie A. Stevenson, Director