



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

May 5, 2015

Nu-Tire & Retread Center, Inc.
325 East State Street
Fremont, Ohio 43420

Re: Nu-Tire & Retread Center, Inc.
DFFO
Acknowledgement
Scrap Tires
Sandusky County
ST019599

Subject: Final Findings and Orders

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Nu-Tire and Retread Center, Inc.

You are hereby notified that this action of the Director of Ohio EPA (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. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 made payable to "Treasurer, State of Ohio." The Commission, in its discretion, may reduce the fee if by affidavit it is demonstrated 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 with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
77 South High St., 17th Floor
Columbus, Ohio 43215

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

Sincerely,

A handwritten signature in black ink that reads "D. Crumiell-Hagens".

Demitria Crumiell-Hagens, Administrative Professional II
Division of Materials & Waste Management

Enclosure

cc: Melinda Berry, DMWM, CO
Kelly Jeter, DMWM, CO
Janine Maney, Legal
Mike Reiser, DMWM, NWDO
Susan Hardy, DMWM, NWDO

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent McGrady is the owner of a 0.1837 acre parcel of land located at 323 E. State Street, Sandusky Township, Sandusky County, Fremont, Ohio, identified by the Sandusky County Auditor as parcel number 34-50-00-0457-00, (hereinafter, the "Property").
2. Respondent Nu-Tire & Retread Center, Inc. owns and operates a new tire retail business located on the Property.
3. 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).
4. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).
5. ORC Section 3734.01(M) defines "storage" in relevant part as "...used in connection with solid wastes that consist of scrap tires, 'storage' means the holding of scrap tires for a temporary period in such a manner that they remain retrievable and, at the end of that period, are beneficially used; stored elsewhere; placed in a scrap tire monocell or monofill facility licensed under section 3734.81 of the Revised Code; processed at a scrap tire recovery facility licensed under that section or a solid waste incineration or energy recovery facility subject to regulation under this chapter; or transported to a scrap tire monocell, monofill, or recovery facility, any other solid waste facility authorized to dispose of scrap tires, or a facility that will beneficially use the scrap tires, that is located in another state and is operating in compliance with the laws of the state in which the facility is located."
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 storage of scrap tires in any amount is deemed a nuisance, a hazard to public health or safety, or a fire hazard unless the scrap tires are stored in accordance with the specific standards set forth in OAC Rule 3745-27-60(B)(1) – (B)(11):
8. Scrap tires, if not properly handled and stored, 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.

9. Ohio EPA inspected the Property on February 27, 2012, April 10, 2012, June 15, 2012, July 3, 2012, September 20, 2012, August 12, 2013, October 10, 2013, December 5, 2013, January 30, 2014, and April 18, 2014, and observed the following violations:
- a. OAC Rule 3745-27-60(B)(1) for failure to maintain sufficient drainage such that water has not collected in the area where scrap tires are stored;
 - b. OAC Rule 3745-27-60(B)(7)(b) for storing scrap tires in piles exceeding eight feet in height;
 - c. OAC Rule 3745-27-60(B)(7)(d) for failure to maintain scrap tire storage piles of more than five hundred scrap tires separated from other scrap tire storage piles and from buildings and structures by a fire break with a width equal to or greater than fifty-six feet in accordance with the fire break chart in appendix I to OAC Rule 3745-27-65; and
 - d. OAC Rule 3745-27-60(B)(7)(e) for failure to maintain sufficient fire breaks to allow access of emergency vehicles at all times to, around, and between the scrap tire storage piles and areas.

Ohio EPA documented these violations in NOV letters to Respondents dated March 5, 2012, April 19, 2012, June 26, 2012, July 17, 2012, September 27, 2012, August 23, 2013, November 13, 2013, December 13, 2013, February 4, 2014, and April 25, 2014, respectively.

10. On May 20, 2014, Ohio EPA inspected the Property and observed approximately 762 scrap tires stored outside on the Property. The inspector observed the following violations:
- a. OAC Rule 3745-27-60(B)(1) for failure to maintain sufficient drainage such that water has not collected in the area where scrap tires are stored;
 - b. OAC Rule 3745-27-60(B)(7)(b) for storing scrap tires in piles that exceed eight feet in height;
 - c. OAC Rule 3745-27-60(B)(7)(d) for failure to maintain scrap tire storage piles of more than five hundred scrap tires separated from other scrap tire storage piles and from buildings and structures by a fire break with a width equal to or greater than fifty-six feet in accordance with the fire break chart in appendix I to OAC Rule 3745-27-65;

- d. OAC Rule 3745-27-60(B)(7)(e) for failure to maintain sufficient fire breaks to allow access of emergency vehicles at all times to, around, and between the scrap tire storage piles and areas.
- e. OAC Rule 3745-27-60(C)
 - (1) For failure to do one or more of the following to control mosquitos:
 - (a) Removing liquids from scrap tires within twenty-four hours of accepting the scrap tires.
 - (b) Store scrap tires such that water does not accumulate in scrap tires or containers. Tires shall be kept free of water at all times.
 - (c) Within twenty-four hours of accepting scrap tires containing liquid arrange for the application of a pesticide or larvicide, which is registered for use as mosquito control by the Ohio department of agriculture.
 - (2) For failure to maintain mosquito control by keeping all tires dry or by continuing applications of a pesticide or larvicide to all scrap tires stored outdoors at no greater than thirty-day intervals or as recommended by the manufacturer or formulator.
 - (3) For failure to maintain mosquito control records at the premises indicating the name, type, amount used per tire, and EPA registration number of the pesticide or larvicide. The property owner or the owner or operator of the premises shall make the mosquito control records available for inspection by the director or the health commissioner during normal operating hours. The owner or operator shall retain copies of mosquito control records for a minimum period of three years.

On May 30, 2014, Ohio EPA documented these violations in a NOV letter to Respondents.

- 11. Given that scrap tires may become a breeding ground for mosquitoes and a potential fire hazard, and given the documented proximity of the scrap tire piles to public and private water wells, to sensitive sub-populations, such as an elementary school, and that scrap tires on the ground on the Property are not being stored in accordance with OAC Rule 3745-27-60(B) and (C), the Director has determined that the accumulation of scrap tires on the Property constitutes a nuisance, a hazard to the public health or safety or to the environment.

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)(1). OAC Rule 3745-27-60(C)(1) requires that one or more of the following shall be done to control mosquitoes:
 - a. Remove liquids from scrap tires within twenty-four hours of accepting the scrap tires.
 - b. Store scrap tires such that water does not accumulate in scrap tires or containers. Tires shall be kept free of water at all times.
 - c. Within twenty-four hours of accepting scrap tires containing liquid, arrange for the application of a pesticide or larvicide, which is registered for use as mosquito control by the Ohio department of agriculture.
2. Upon the effective date of these Orders, Respondents shall maintain mosquito control in accordance with the provisions of OAC Rule 3745-27-60(C)(2) by keeping all tires dry or by continuing applications of a pesticide or larvicide to all scrap tires stored outdoors at no greater than thirty-day intervals or as recommended by the manufacturer or formulator.
3. For a period of one year from the effective date of the Orders, Respondents shall provide copies of any mosquito control records maintained in accordance with OAC Rule 3745-27-60(C)(3) to Ohio EPA within ten (10) days after each application of a registered pesticide, larvicide, or adulticide.
4. 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).
5. Upon the effective date of these Orders, Respondents shall obtain receipts from the registered scrap tire transporter and the authorized scrap tire facility or solid waste disposal facility indicating weight, volume or number of scrap tires transported and disposed.
6. For a period of one year from the effective date of the Orders, Respondents shall forward such copies of receipts obtained in accordance with Order number 5 to Ohio EPA within fourteen (14) days after each occasion Respondents cause the transportation and disposal of scrap tires.

7. Not later than one hundred eighty (180) days after the effective date of these Orders, Respondents shall pay Ohio EPA one thousand two hundred fifty dollars (\$1,250.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734, and which will be deposited into the environmental remediation fund established pursuant to ORC Section 3734.281. Payment shall be made by official check made payable to "Treasurer, State of Ohio" for the stated amount. The official check shall be submitted to Ohio EPA, Lazarus Government Center, Office of Fiscal Administration, PO Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondents and the Property. A copy of the check shall be sent to Ohio EPA, Lazarus Government Center, Division of Materials and Waste Management, Supervisor, Administrative Processing Unit, PO Box 1049, Columbus, Ohio 43216-1049.

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 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 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 a responsible official of 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.

X. NOTICE

All documents required to be submitted by Respondents pursuant to these Orders shall be mailed or faxed to the following address:

Ohio Environmental Protection Agency
Northwest District Office
Division of Materials and Waste Management
347 North Dunbridge Road
Bowling Green, Ohio 43402

Fax Number: (419) 352-8468

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.

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. 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. 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.

Director's Final Findings and Orders
Nu-Tire & Retread Center, Inc.
Randall S. McGrady
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IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

A handwritten signature in black ink, appearing to read "CWB", written over a horizontal line.

Craig W. Butler, Director

IT IS SO AGREED:

Nu-Tire & Retread Center, Inc.

Randall S. McGrady
Signature

4/10/15
Date

RANDALL S. McGRADY
Printed or Typed Name

OWNER
Title

Randall S. McGrady

Randall S. McGrady
Signature

4/20/15
Date

RANDALL S. McGRADY
Printed or Typed Name