



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

OHIO E.P.A.

SEP 15 2015

ENTERED DIRECTOR'S JOURNAL

September 15, 2015

Randall Middaugh  
4971 County Road 130  
Huntsville, Ohio 43324

Re: **Freedom Recycling and Recovery**  
**DFFO**  
**Correspondence**  
**Scrap Tires**  
**Logan County**  
**ST020908**

**Subject:** Final Findings and Orders

Dear Mr. Middaugh:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Randall Middaugh.

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., 17<sup>th</sup> Floor  
Columbus, Ohio 43215

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

Sincerely,

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

Enclosure

cc: Carl Mussenden, DMWM, CO  
Kelly Jeter, DMWM, CO  
Janine Maney, Legal  
Jeff Hurdley, Legal  
Tracy Buchanan, DMWM, SWDO  
Russ Brown, DMWM, SWDO  
Jill Olberding, DMWM, SWDO

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of

Randall Middaugh	:	<u>Director's Final Findings</u>
4971 County Road 130	:	<u>and Orders</u>
Huntsville OH 43324	:	

Respondent

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Randall Middaugh ("Respondent") 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 BOUND**

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 Chapter 3734. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of the property located at 4971 County Road 130, Huntsville, Logan County, Ohio, an 8.961 acre parcel of property identified as Parcel Number 23-062-00-00-036-000, and a 1.039 acre parcel of property identified as Parcel Number 23-062-00-00-036-001("the Property").
2. There are an estimated more than one hundred thousand (100,000) scrap tires disposed on the Property covering approximately 3.0 acres of the Property.
3. Respondent is 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. The Property 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.
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. ORC Section 3734.01(I) defines "Open dumping" as follows: "The depositing of solid wastes into a body or stream of water or onto the surface of the ground at a site that is not licensed as a solid waste facility under section 3734.05 of the Revised Code or, if the solid wastes consist of scrap tires, as a scrap tire collection, storage, monocell, monofill, or recovery facility under section 3734.81 of the Revised Code; the depositing of solid wastes that consist of scrap tires onto the surface of the ground at a site or in a manner not specifically identified in divisions (C)(2) to (5), (7), or (10) of section 3734.85 of the Revised Code; the depositing of untreated infectious wastes into a body or stream of water or onto the surface of the ground; or the depositing of treated infectious wastes into a body or stream of water or onto the surface of the ground at a site that is not licensed as a solid waste facility under section 3734.05 of the Revised Code."
8. OAC Rule 3745-27-01(O)(4)(b) defines open dumping as, "[t]he deposition of solid wastes that consist of scrap tires into waters of the state, and also means 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. The open dumping of scrap tires is a violation of ORC § 3734.03 which states that "[n]o person shall dispose of solid wastes by open burning or open dumping," and OAC Rule 3745-27-05(C) which states that "[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."

10. OAC Rule 3745-27-60(B) provides that "[t]he 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" the standards in OAC Rule 3745-27-60(B). OAC Rule 3745-27-60(B)(7) states: The following requirements apply to storage of scrap tires outside of portable containers, trucks, semi-trailers, a building or covered structure:
  - a. Individual scrap tire storage piles shall be no greater than two thousand five hundred square feet in basal area and the total number of scrap tires shall not exceed the amount specified in paragraph (A) of rule 3745-27-61 of the Administrative Code. Scrap tire storage piles shall include any area where scrap tires are stored in racks. The two thousand five hundred square feet basal area shall apply to multiple racks and small scrap tire piles not separated from other racks, piles, or structures by a fire break at least fifty-six feet wide. The basal area of the scrap tire storage pile shall include the area of the tire piles, racks, and the area of any walkway or other open areas that do not meet the definition of a fire break as defined in rule 3745-27-01 of the Administrative Code.
  - b. Scrap tire storage piles shall not exceed eight feet in height.
  - c. Scrap tire storage piles of five hundred scrap tires or less shall be at least twenty-five feet away from all buildings and other scrap tire storage piles.
  - d. Scrap tire storage piles of more than five hundred scrap tires including single or multiple racks containing a total of more than five hundred scrap tires shall be 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 rule 3745-27-65 of the Administrative Code.
  - e. Sufficient fire breaks shall be maintained to allow access of emergency vehicles at all times to, around, and between the scrap tire storage piles and areas.
11. 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.
12. Given that the scrap tires on the Property constitute a breeding ground for mosquitoes, and given the potential that a scrap tire fire could occur, and given the proximity of the scrap tire piles to sensitive sub-populations such as an elementary school and a senior care center, 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.

13. On April 8, 2014 the Logan County Health District ("Health Department") conducted an inspection of Respondent's Property and observed the following violations:
- a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid wastes, including scrap tires;
  - b. OAC Rule 3745-27-60(B)(7)(b) for storing scrap tires in storage piles exceeding eight feet in height;
  - c. OAC Rule 3745-27-60(B)(7)(c) for storing scrap tires in storage piles of five hundred scrap tires or less closer than twenty-five feet away from buildings and other scrap tire storage piles;
  - d. OAC Rule 3745-27-60(B)(7)(d) for storing scrap tire storage piles of more than five hundred scrap tires closer than fifty-six feet;
  - e. 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.

These violations were documented in a NOV from the Health Department to Respondent Randall Middaugh dated May 2, 2014. In that letter, the Health Department noted the following observations: There are thousands of scrap tires in various sized piles. The Property is neither licensed nor permitted as a scrap tire storage facility nor a solid waste disposal facility in accordance with ORC Chapter 3734. The property owner or operator is required to take mosquito control measures under OAC Rule 3745-27-60(C).

14. On September 4, 2014 Ohio EPA and the Health Department conducted a joint inspection of the Property. The Ohio EPA inspector observed the following violations:
- a. OAC Rule 3745-27-60(B)(7)(a) for storing scrap tire piles in an area greater than two thousand five hundred square feet in basal area;
  - b. OAC Rule 3745-27-60(B)(7)(b) for storing scrap tires in storage piles exceeding eight feet in height;
  - c. OAC Rule 3745-27-60(B)(7)(c) for storing scrap tires in storage piles of five hundred scrap tires or less closer than twenty-five feet away from buildings and other scrap tire storage piles;
  - d. OAC Rule 3745-27-60(B)(7)(d) for storing scrap tire storage piles of more than five hundred scrap tires closer than fifty-six feet;
  - e. 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;
  - f. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid wastes, including scrap tires.

These violations were documented in a NOV from Ohio EPA to Respondent Middaugh dated April 8, 2015. In that letter, the Ohio EPA noted the following observations: multiple piles of scrap tires scattered throughout the Property; scrap tire piles greater than two thousand five hundred square feet in basal area;

scrap tires closer than 25 feet from the office building; scrap tire storage piles eight (8) feet in height along the southwestern side of the Property; vegetation and insufficient fire breaks around scrap tire piles throughout the Property; and, combustible material, including weeds and debris around the scrap tires. There were no fire lanes around the scrap tires throughout the Property. Scrap tires containing water were observed and mosquito control measures for scrap tires appeared to be inadequate.

15. ORC Section 3734.85 provides in relevant part 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."
16. ORC Section 3734.85 provides in relevant part: "Before initiating any enforcement or removal actions under this division against the owner of the land on which the accumulation is located, the director shall initiate any such actions against the person that the director has identified as responsible for causing the accumulation of scrap tires."
17. On April 10, 2015 the Director issued Final Findings and Orders, a scrap tire removal and disposal order, to Rodney Burnside II, as a person responsible for the accumulation of scrap tires on the property located at 4971 County Road 130, Huntsville, Logan County, Ohio pursuant to ORC sections 3734.13 and 3734.85 for violations of open dumping of scrap tires.
18. ORC Section 3734.85 provides in relevant part: "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."
19. On July 24, 2015, Ohio EPA and the Health Department conducted a joint inspection of the Property. The Ohio EPA inspector observed the following violations:
  - a. OAC Rule 3745-27-60(B)(7)(a) for storing scrap tire piles in an area greater than two thousand five hundred square feet in basal area;
  - b. OAC Rule 3745-27-60(B)(7)(c) for storing scrap tires in storage piles of five hundred scrap tires or less closer than twenty-five feet away from buildings and other scrap tire storage piles;

- c. OAC Rule 3745-27-60(B)(7)(d) for storing scrap tire storage piles of more than five hundred scrap tires closer than fifty-six feet;
- 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. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid wastes, including scrap tires.

These violations were documented in a NOV from Ohio EPA to Respondent Middaugh dated August 7, 2015. In that letter, the Ohio EPA noted the following observations: multiple piles of scrap tires and scattered scrap tires; scrap tire piles greater than two thousand five hundred square feet in basal area; scrap tires closer than 25 feet from the office building; vegetation and insufficient fire breaks around scrap tire piles; and, combustible material, including weeds and debris around the scrap tires. Scrap tires containing water were observed and mosquito larvae and adult mosquitoes were present.

- 20. ORC Section 3734.85 provides in relevant part: "If the recipient of an order issued under this division fails to comply with the order within one hundred twenty days after the issuance of the order or, if the time for compliance with the order was so extended, within that time, the director shall take such actions as the director considers reasonable and necessary to remove and properly manage the scrap tires located on the land named in the order. The director, through employees of the environmental protection agency or a contractor, may enter upon the land on which the accumulation of scrap tires is located and remove and transport them to a scrap tire recovery facility for processing, to a scrap tire storage facility for storage, or to a scrap tire monocell or monofill facility for storage or disposal. The director shall enter into contracts for the storage, disposal, or processing of scrap tires removed through removal operations conducted under this section."
- 21. 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. The director shall keep an itemized record of those costs. Upon completion of the actions for which the costs were incurred, the director shall record the costs at the office of the county recorder of the county in which the accumulation of scrap tires was located. The costs so recorded constitute a lien on the property on which the accumulation of scrap tires was located until discharged."

## V. ORDERS

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

1. Not later than fourteen (14) days after the effective date of these Orders, Respondent shall establish scrap tire storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60.
2. Not later than fourteen (14) days after the effective date of these Orders, Respondent shall implement mosquito control measures at the Property, and maintain mosquito control records at the premises, in accordance with the provisions of OAC Rule 3745-27-60(C).
3. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of all 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, monofill, monocell, or recovery facility licensed under ORC Section 3734.81, to such a facility in another state operating in compliance with the laws of that 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. During the 120 day period, Respondent shall remove, transport and dispose of at least 20,000 scrap tires within 30 days of the effective date of the Orders, and Respondent shall remove, transport and dispose of at least 20,000 scrap tires every 30 days thereafter, with all of the scrap tires being removed, transported and disposed within 120 days after the effective date of these Orders.
4. Not later than ten (10) days after removal of the first 20,000 scrap tires in accordance with Order No. 3 above, and thereafter on a monthly basis by the tenth day of each month, Respondent shall obtain and forward to Ohio EPA Southwest District Office receipts from the registered transporter and the disposal facility, indicating weight, volume and number of scrap tires transported and received.
5. Respondent shall continue to comply with Order Nos. 1 and 2 above until such time as all scrap tires have been removed from the Property.



## **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, 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. 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 45402-2911  
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**

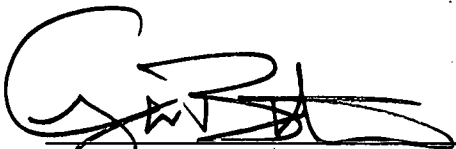
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance 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 Respondent to perform additional activities pursuant to ORC Chapter 3734. or any other applicable law in the future. Nothing herein shall restrict the right of 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 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:**

A handwritten signature in black ink, appearing to read "C. W. Butler", is written over a horizontal line.

Craig W. Butler, Director