

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 has determined the following findings:

1. Respondents are the owners of real property located at 3851 South Street (previously 600 Augspurgen Road) in Hamilton, Butler County, Ohio, upon which exists an unpermitted, unlicensed, scrap tire storage area ("Storage Area"). Respondents are also the owners and operators of a class II scrap tire recovery facility which is also located on the aforementioned property.
2. The Storage Area consists of approximately 50 acres and contains an estimated 1.0 to 1.5 million scrap tires. Respondents are responsible for the accumulation of scrap tires at the Storage Area.
3. Pursuant to ORC Section 3734.13 and 3745.01 Respondents entered into consensual Director's Final Findings and Orders on March 14, 2001, ("2001 DFF&O's") to address previous operational and permitting violations at the Storage Area.
4. Order #2(B) of the 2001 DFF&O's requires Respondents to remove at least 200,000 scrap tires from the Storage Area every six months until all scrap tires are removed from the Storage Area.

During the six month period from March 2002 to September 2002, Respondents documented the removal of 67,117.5 tires from the Storage Area. In correspondence dated October 25, 2002, Ohio EPA notified Respondents they were in violation of Order #2(B) of the 2001 DFF&O's.

5. Order #3(D) of the 2001 DFF&O's requires Respondents to store all scrap tires in piles no greater than 2,500 square feet in basal area. Furthermore, OAC Rule 3745-27-60(B)(6)(a) states "Individual scrap tire storage piles shall be no greater than two thousand five hundred square feet in basal area...". The pile size requirement applies to all scrap tire piles at the Storage Area including, but not limited to, the baled tire fence surrounding the perimeter of the Storage Area.

To date, the baled tire fence still remains around most of the Storage Area's perimeter. In correspondence dated July 6, 2001, August 8, 2001, October 23, 2001, January 14, 2002, April 5, 2002, May 14, 2002, June 25, 2002, September 9, 2002, October 25, 2002, and March 12, 2003, Ohio EPA notified Respondents

they were in violation of Order #3(D) of the 2001 DFF&O's. In correspondence dated May 14, 2002, June 25, 2002, September 9, 2002, October 25, 2002, and March 12, 2003, Ohio EPA notified Respondents they were in violation of OAC Rule 3745-27-60(B)(6)(a).

6. Order #3(E) of the 2001 DFF&O's requires Respondents to separate all scrap tire storage piles from other scrap tire storage piles and from buildings by fire lanes with a width equal to or greater than 50 feet. The 2001 DFF&O's also require Respondents to separate all scrap tire storage piles from the property line by at least 100 feet.

To date, the baled tire fence surrounding the perimeter of the Storage Area does not meet the requirement to store scrap tires at least 100 feet from the property line and also does not meet the requirement to provide 50 foot fire lanes. In correspondence dated July 6, 2001, August 8, 2001, October 23, 2001, January 14, 2002, April 5, 2002, May 14, 2002, June 25, 2002, September 9, 2002, October 25, 2002, and March 12, 2003, Ohio EPA notified Respondents they were in violation of Order #3(E) of the 2001 DFF&O's.

7. Order #3(A) of the 2001 DFF&O's requires Respondents to immediately take the necessary steps to prevent ponding of water in areas where any scrap tires are stored. Furthermore, OAC Rule 3745-27-60(B)(1) states, "Sufficient drainage shall be maintained such that water does not collect in the area where scrap tires are stored."

Standing water was observed in tire piles located along the southwest border of the Storage Area. In correspondence dated May 14, 2002, and June 25, 2002, Ohio EPA notified Respondents they were in violation of Order #3(A) of the 2001 DFF&O's and OAC Rule 3745-27-60(B)(1).

8. OAC Rule 3745-27-60(B)(9)(b) states that if Ohio EPA discovers the presence of "[m]osquito larvae at the premises, the owner or operator shall apply within twenty-four hours a larvicide 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. Records shall be kept at the facility indicating the trade name of the larvicide, the date and time of the application, and the name of the person who applied the larvicide."

Mosquito larvae were present on May 9, 2002, in baled tires located in the west central area of the Storage Area. In correspondence dated May 14, 2002, Ohio EPA notified Respondents they were in violation of OAC Rule 3745-27-60(B)(9)(b) because they failed to apply a registered larvicide within twenty-four hours.

9. OAC Rule 3745-27-60(B)(6)(f) states, "Sufficient fire lanes shall be maintained to

allow access of emergency vehicles at all times to and around the scrap tire storage piles and areas.”

Respondents have not properly maintained the fire lanes in the Storage Area to allow access of emergency vehicles at all times to and around the scrap tire storage piles and areas. In correspondence dated May 14, 2002, June 25, 2002, September 9, 2002, October 25, 2002, and March 12, 2003, Ohio EPA notified Respondents they were in violation of OAC Rule 3745-27-60(B)(6)(f).

10. OAC Rule 3745-27-60(B)(6)(e) states, “Fire lanes shall be maintained to be free of combustible material including but not limited to weeds and leaves.”

Respondents have not properly maintained fire lanes in the Storage Area to be free of combustible materials, including weeds, leaves, solid waste, and scrap tires. In correspondence dated May 14, 2002, June 25, 2002, September 9, 2002, October 25, 2002, and March 12, 2003, Ohio EPA notified Respondents they were in violation of OAC Rule 3745-27-60(B)(6)(e).

11. OAC Rule 3745-27-60(B)(6)(c) states, “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.”

Several fire lanes in the Storage Area are blocked by scrap tires and/or solid waste. In correspondence dated May 14, 2002, June 25, 2002, September 9, 2002, October 25, 2002, and March 12, 2003, Ohio EPA notified Respondents they were in violation of OAC Rule 3745-27-60(B)(6)(c) for failure to maintain 25 feet between scrap tire storage piles.

12. Scrap tires, if not properly managed, may become a breeding ground for mosquitos. Mosquitos are a common disease vector for St. Louis encephalitis, La Crosse encephalitis, Yellow Fever, West Nile Virus and Dengue Fever. Based on testing of mosquitos collected at the Storage Area in July and August of 2002, the Ohio Department of Health (“ODH”) has confirmed the presence of mosquitos carrying West Nile Virus (“WNV”) at the Storage Area. Additionally ODH has confirmed the presence of WNV in at least 20 birds, 9 horses, and 4 humans in Butler County.

13. Due to the proximity of the Storage Area to the Village of New Miami, the City of Hamilton, Williamsdale in Sinclair Township, the confirmed presence of WNV at the Storage Area, and considering the proximity of the Storage Area to U.S. Route 127 and the potential of a tire fire that could obscure the road, and in consideration of the effects of a tire fire that could adversely impact waters of the state, the Director has determined that the accumulation of scrap tires at the Storage Area constitutes a danger to the public health or safety, or to the environment.

14. 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, he 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."
15. Consistent with ORC Section 3734.85, the Director may extend the time for removal of scrap tires from the Storage Area beyond one hundred and twenty days in light of good faith efforts by responsible parties to remove the scrap tires. In light of Respondents' willingness dispose of and maintain the scrap tires as set forth in these Orders, the Director is willing to extend the time period for removal of the scrap tires from the Storage Area as set forth below.

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 cease illegal acceptance of solid wastes, including scrap tires, at the Storage Area.
2. Upon the effective date of these Orders, Respondents shall provide on site security for the Storage Area or install a security fence that limits unauthorized access to the Storage Area. This fence shall not be constructed of scrap tires.
3. Upon the effective date of these Orders, Respondents shall implement all required mosquito control measures at the Storage Area in accordance with the provisions of OAC Rule 3745-27-60(B)(8). Respondents shall continue to undertake those required mosquito control measures until all scrap tires are removed from the Storage Area. Respondents shall provide copies of mosquito control records to Ohio EPA's Southwest District Office as an attachment to Respondents' monthly progress report as required by Order No.11 below. Mosquito control records are to include the following: a) type of treatment used, b) the number of the pile treated, c) area covered by the treatment, and d) if using a pesticide or larvicide, the name, type, amount used per scrap tire, EPA registration number of the pesticide or larvicide, the date and time of the application, and the name of the person who applied the pesticide or larvicide. Mosquito control records shall also describe and fully document Respondents' methods used to determine the effectiveness of the

mosquito control measures.

4. Within 30 days after the effective date of these Orders, Respondents shall complete installation of fifty (50) foot fire lanes every five hundred (500) feet in the baled tire "fence" surrounding the perimeter of the Storage Area.
5. Within 45 days after the effective date of these Orders, Respondents shall store all loose scrap tires at the Storage Area in accordance with OAC Rule 3745-27-60(B)(1) through (6).
6. Within 60 days after the effective date of these Orders, Respondents shall store all scrap tires at the Storage Area in accordance with OAC Rule 3745-27-60(B)(1) through (6). Scrap tires piles at the Storage Area that are 14 feet in height or less as of the effective date of these orders need not be reduced in height to eight feet as required by OAC Rule 3745-27-60(B)(6)(b), provided that Respondent complies with the removal schedule in Order No. 9 below.
7. Within 75 days after the effective date of these Orders, Respondents shall provide a map of the Storage Area to Ohio EPA depicting individual and numbered scrap tire piles.
8. Within 90 days after the effective date of these Orders, Respondents shall begin removing scrap tires from the Storage Area including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires by removing thirty-three thousand (33,000) scrap tires within 90 days after the effective date of this Order and shall continue to remove 33,000 scrap tires every 30 days thereafter, until all scrap tires are removed from the Storage Area. Respondents shall indicate, on a form prepared weekly, the number of scrap tires removed from each numbered pile at the Storage Area to any other authorized location.
9. Respondents shall arrange for scrap tire transportation, by a registered transporter, to a scrap tire storage, monocell, monofill, or recovery facility licensed under ORC Section 3734.81, 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.
10. Respondents shall obtain receipts from the registered transporter and the authorized scrap tire facility indicating weight, volume and number of scrap tires received and shall forward such documentation to Ohio EPA Southwest District Office as an attachment to Respondents' monthly progress reports, required pursuant to Order No. 11 and due to Ohio EPA by the 10th of each subsequent month.
11. Respondents shall submit monthly progress reports beginning 30 days after the effective date of these Orders. Thereafter, the monthly progress reports shall be submitted every month for the previous calendar month until all scrap tires are

removed from the Storage Area. Respondents' monthly progress reports, due to Ohio EPA by the 10th day of each month, shall summarize Respondents' efforts to comply with each of the requirements of these Orders.

12. If Respondents fail to remove scrap tires from the Storage Area in accordance with Order No. 8 above, Respondents shall provide the Director and his employees, representatives and contractors with access to the Storage Area to perform whatever measures the Director considers reasonable and necessary to remove and properly manage the scrap tires located at the Storage Area.
13. If the Director removes the scrap tires from the Storage Area, Respondents shall reimburse the Director, within 30 days of written request, for the costs incurred by the Director for conducting the removal operation, storing at a scrap tire storage facility, storing or disposing at a scrap tire monocell or monofill facility, processing scrap tires so removed, the transporting of the scrap tires from the Storage Area to the scrap tire storage, monocell, monofill, or recovery facility where the scrap tires were stored, disposed of, or processed, and for the administrative and legal expenses incurred by the Director in connection with the removal operation.
14. Unless the Director determines, according to the procedure set forth below, that Respondents do not have the financial ability to pay all or some portion of the civil penalty proposed herein, Respondents shall pay Ohio EPA the amount of twenty-five thousand one hundred and twenty dollars (\$25,120.00) 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 scrap tire management fund established pursuant to ORC § 3734.82(G). Respondents may, within fifteen (15) days of the effective date of these orders, submit the following documentation to Ohio EPA to demonstrate that the Respondents do not have the financial ability to pay all or some portion of the civil penalty:
 - a. Respondent D&R Recyclers, Inc. shall submit financial statements, preferably audited, for the years 2002, 2001, 2000, 1999 and 1998. These documents should include balance sheets, statements of income, cash flow statements, statements of changes in financial position, statements of investments and distributions to shareholders or owners. This should include all schedules and notes to the financial statements.
 - b. Respondent Darrel Rutherford shall submit a personal statement of net worth and a statement indicating his monthly income and expenses. This document must be signed and dated.
 - c. Respondent D&R Recyclers, Inc. shall submit five (5) years of the most recently completed Federal Income Tax Returns and Respondent Darrel Rutherford shall submit five (5) years of the most

recently completed personal Federal Income Tax Returns. Respondents shall include all attached schedules and computer generated tables to document all data disclosed in the foregoing Federal Income Tax Returns.

Within sixty (60) days of the date of receipt of all of the foregoing documentation by Ohio EPA, the Director shall make a determination as to whether Respondents have the financial ability to pay all or some portion of the civil penalty. In the event that the Director determines that Respondents do not have the financial ability to pay all or some portion of the civil penalty, the Director may reduce the amount of the civil penalty by proposing to modify these Orders in accordance with Section IX hereof. In the event that Respondents elect not to submit the foregoing documentation to Ohio EPA or the Director determines that Respondents do have the financial ability to pay all of the civil penalty proposed herein, Respondents shall pay the full amount of the civil penalty (\$25,120.00) in accordance with the following schedule: Respondents shall pay one-half of the civil penalty within 180 days after the effective date of these Orders and the remainder of such civil penalty shall be due thereafter in two equal payments, the first to be due within 300 days after the effective date of these Orders and the second to be due within 420 days after the effective date of these Orders.

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, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondents and the Storage Area and a copy of the check shall be sent to Ann Wood, Legal, Ohio EPA.

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 the Chief of Ohio EPA's Division of Solid and Infectious 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: "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. For purposes of these Orders, a responsible official

is defined in OAC Rule 3745-31-04(B).

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 Respondents' Storage Area.

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 federal, state, and local laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents.

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 addressed to:

Ohio Environmental Protection Agency
Southwest District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
401 East Fifth Street
Dayton, OH 45402

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. of these Orders.

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.

IT IS SO ORDERED AND AGREED:

Christopher Jones
Christopher Jones, Director

6-16-03
Date

IT IS SO AGREED:

D&R Recyclers, Inc.

Darrel Rutherford
Signature

6/12/03
Date

Darrel Rutherford
Printed or Typed Name

President
Title

Darrel Rutherford

Darrel Rutherford
Signature

6/12/03
Date

Darrel Rutherford
Printed or Typed Name