



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

March 3, 2016

Tina Custer
8075 Jericho Road
Hicksville, Ohio 43526

Re: **Tina Custer Open Dump
Director's Final Findings and Orders (DFFO)
DFFO
Scrap Tires
Defiance County
ST019528**

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 Tina Custer.

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 Troy Harter at (614) 644-3037.

Sincerely,


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

Enclosure

cc: Carl Mussenden, DMWM, CO
Jeff Hurdley, Legal
Troy Harter, Legal
Curtis DeLong, DMWM, NWDO
Mike Reiser, DMWM, NWDO
John Pasquarette, DMWM, NWDO



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

MAR 03 2016

Certified Mail

Tina Custer
8075 Jericho Road
Hicksville, OH 43526

Re: Tina Custer
DFF&Os
Scrap Tires
Defiance County
ST019528

RE: Director's Final Findings and Orders

Dear Mrs. Custer,

I am writing you to follow up on previous conversations regarding your property located at 8075 Jericho Road, Hicksville, Ohio. As you are aware, Ohio EPA's Division of Materials and Waste Management, Northwest District Office ("DMWM-NWDO") conducted inspections of your Property on multiple occasions. These inspections revealed violations of Ohio Revised Code Chapter 3734, and Ohio Administrative Code Chapters 3745-27 and 3745-400, which my staff has discussed with you in the past.

Since my staff last talked with you, Ohio EPA has been carefully considering the options available to address the scrap tires accumulated on the property. In particular, my staff has examined options in light of your previous statement that you may be unable to perform the removal of tires from the property yourself. After considering these matters, Ohio EPA is ready to proceed with a resolution.

Please see attached to this letter Orders concerning the removal of tires and construction and demolition debris from your property. These Orders provide you with the opportunity to clean the tires, and related construction and demolition debris, from the property. If you are not able remove the tires and the related debris yourself, please notify Ohio EPA DMWM-NWDO, and the Agency will then mobilize a contractor to remove the tires and related debris. Please note that if Ohio EPA completes the cleanup, it will place a lien on your property to help secure reimbursement to the State for its expenditures. This lien is required by Ohio law, and is placed on all properties where Ohio EPA expends funds to remove a scrap tire accumulation. Also note that the tires must be managed to control mosquitos during the interim period before removal.

I look forward to the resolution of these matters in the immediate future.

Tina Custer
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "Craig W. Butler". The signature is fluid and cursive, with the first name "Craig" and last name "Butler" clearly distinguishable.

Craig W. Butler
Director

CWB/sh

Enclosures

cc: Bruce McCoy, DMWM Manager/Enforcement Coordinator
Kelly Jeter, DMWM Enforcement Supervisor
Carl Mussenden, DMWM-CO
Mike Reiser, DMWM Supervisor-NWDO
Troy Harter, Legal
Tina Custer

OHIO E.P.A.

MAR -3 2016

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter Of

Tina Custer
8075 Jericho Road
Hicksville, Ohio

: Director's Final Findings
:
:
:
:
and Orders

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Tina Custer ("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

These Orders shall apply to and be binding upon Respondent, and her 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 8075 Jericho Road, a property identified as Parcel Number G190029000600 ("the Property") located in Defiance County.
2. 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).
3. Respondent is an "owner" as that term is defined in OAC Section 3745-27-01(O)(7).

4. There are an estimated more than one thousand (1,000) scrap tires disposed on the Property. These tires are placed in several piles outside on the property. Many of these tires contain water.
5. 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."
6. 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, nor has any application been submitted.
7. ORC Section 3734.01(I) defines "Open dumping" of scrap tires as the depositing of scrap tires "into a body or stream of water or onto the surface of the ground at a site that is not licensed . . . as a scrap tire collection, storage, monocell, monofill, or recovery facility under section 3734.81 of the Revised Code" or "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"
8. OAC Rule 3745-27-01(O)(4)(b) defines open dumping as, "[t]he 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. OAC Rule 3745-27-60(C) states, "Anyone storing scrap tires shall maintain mosquito control as follows:
 - (1) 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) 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) 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 date and time of the application, and the name of the person who applied 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."

13. OAC Rule 3745-27-61(B) states in pertinent part, "An application for a registration certificate as required by section 3734.75, 3734.76, or 3734.78 of the Revised Code, shall be submitted to and approved by the director, before the establishment or modification of the scrap tire collection, class II scrap tire storage, or class II scrap tire recovery facility is begun."

14. OAC Rule 3745-27-60(B)(7)(a-e) 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 foot 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.”
15. ORC Section 3734.76(C) states in pertinent part, “On and after the effective date of the rules adopted under section 3734.71 of the Revised Code, no person shall establish a new, or modify an existing, scrap tire storage facility without first either registering with the director by submitting an application for a scrap tire storage facility registration certificate with accompanying information regarding the facility and its method of operation or submitting to the director an application for a scrap tire storage facility permit with accompanying engineering detail plans, specifications, and information regarding the facility and its method of operation, as determined by the applicant in accordance with rules adopted under section 3734.71 of the Revised Code, for approval under those rules and receiving a registration certificate or a permit issued by the director under this division.
 16. Two partially demolished mobile homes have been observed on the property, with wood and other remnants of demolished mobile homes observed throughout the property. Additionally, remnants of a demolished mobile home were noted on the adjoining parcel G190029000500, which is also owned by Respondent. During the initial inspection on October 28, 2010, Respondent’s husband indicated that he removed materials such as wood and metal from the demolished home for his own use.
 17. OAC Rule 3745-400-04(B) states, “No person shall conduct or allow illegal disposal of construction and demolition debris.” “Illegal disposal” is defined in OAC Rule 3745-400-01(S) as “the disposal of construction and demolition debris at any place other than a construction and demolition debris disposal facility . . . or a solid waste disposal facility.”
 18. “Construction and demolition debris” is defined in OAC Rule 3745-400-01(F) as “[t]hose materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure”
 19. The demolished mobile homes and the debris from these homes scattered on Respondent’s Property are considered to be construction and demolition debris because they are manmade physical structures that have been altered and destroyed through Respondent’s husband’s removal of materials.
 20. Respondent has established an illegal construction and demolition debris disposal site by disposing of construction and demolition debris on the Property, which is not a licensed construction and demolition debris disposal facility or solid waste disposal facility.

21. Ohio EPA conducted inspections of the Property on October 20, 2010, June 21, 2013, and May 12, 2015, and documented the following violations in letters dated:

October 28, 2010

- a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping and open burning of solid wastes consisting of scrap tires;
- b. OAC Rule 3745-27-60(C) for not maintaining mosquito control;
- c. OAC Rule 3745-27-61(B) for establishing a scrap tire storage facility without first obtaining a registration; and
- d. OAC Rule 3745-400-04(B) for illegal disposal of construction and demolition debris.

May 17, 2011

- a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid wastes consisting of scrap tires;
- b. OAC Rule 3745-27-60(C) for not maintaining mosquito control; and
- c. OAC Rule 3745-400-04(B) for illegal disposal of construction and demolition debris.

July 10, 2013

- a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid wastes consisting of scrap tires;
- b. OAC Rule 3745-27-60(C) for not maintaining mosquito control;
- c. OAC Rule 3745-27-61(B) and ORC Section 3734.76(C) for establishing a scrap tire storage facility without first obtaining a registration;
- d. OAC Rule 3745-400-04(B) illegal disposal of construction and demolition debris; and
- e. OAC Rule 3745-27-60(B)(7)(a)-(e) for not complying with the scrap tire storage requirements.

May 20, 2015

ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires.

22. Given the potential harm caused by the scrap tires open dumped outside that have not been treated with applications of pesticide or larvicide, and given the potential for a tire fire that could cause adverse health effects, 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.
23. ORC Section 3734.85 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."

24. ORC Section 3734.85(A) 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."
25. ORC Section 3734.85(A) also 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."
26. ORC Section 3734.85(A) 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 thirty (30) days after the effective date of these Orders, Respondent shall implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(C).
2. 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:
 - a) Respondent shall remove, transport and dispose of at least 500 scrap tires within 30 days of the effective date of the Orders, and
 - b) Respondent shall remove, transport and dispose of at least 500 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.
3. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal construction and demolition debris from the Property to a disposal facility authorized to accept that material.
4. Not later than ten (10) days after removal of the scrap tires and construction and demolition debris in accordance with Orders No. 2 and 3 above, Respondent shall obtain and forward to Ohio EPA Northwest District Office receipt(s) from the registered transporter and the disposal facility, indicating weight, volume and number of scrap tires transported and received.

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 Property.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken by Respondent 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
Northwest District Office,
Division of Materials and Waste Management
347 N. Dunbridge Road
Bowling Green, Ohio 43402
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.

XII. 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

Ohio Environmental Protection Agency

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

Craig W. Butler, Director