



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

April 6, 2016

Ellen Tester
c/o Kelly Tester
1303 Pershing Avenue
Middletown, Ohio 45044

Re: **Ellen Tester Property**
Director's Final Findings and Orders (DFFO)
DFFO
Scrap Tires
Butler County
ST021327

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Ellen Tester.

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,

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

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

Enclosure

cc: Bruce McCoy, Kelly Jeter, Melinda Berry, DMWM, CO
Troy Harter, Jeff Hurdley, Legal

Tracy Buchanan, Patrick Willoughby, DMWM, SWDO

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

APR - 5 2016

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

Ellen Tester
c/o Kelly Tester
1303 Pershing Avenue
Middletown, Ohio 45044

: Director's Final Findings

: and Orders

: I certify this to be a true and accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

Respondent

By: Dan Lassiter Date: 4-5-16

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Ellen Tester ("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 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 responsibilities under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Pursuant to Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(7), Respondent is the "owner" or "property owner" of a 1.5 acre parcel of land identified by the Butler County Auditor as Parcel Number C1710018000014 (hereinafter, "the Property"). The Property is located at 220 Oxford State Road, Trenton, Butler County, Ohio, and is vacant.
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. According to ORC Section 3734.01(E) 'Solid wastes' "means such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations . . . and includes, but is not limited to,

garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. 'Solid wastes' does not include any material that is an infectious waste or a hazardous waste."

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 Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).
6. ORC Section 3734.01(I) defines "Open dumping" as "the depositing of solid wastes into a body or stream of water or into 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"
7. The open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C), which respectively state that "[n]o person shall dispose of solid wastes by open burning or open dumping" and "[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."
8. OAC Rule 3745-27-01(O)(4)(b) defines "open dumping" as including "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 Property is neither licensed nor permitted as a scrap tire collection facility, a solid waste disposal facility, a junk yard, or any type of legitimate recycling facility.
10. OAC Rule 3745-27-60(B) provides the 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 paragraphs (B)(1) through (B)(11) of this rule.

11. Pursuant to OAC Rule 3745-27-60(C), "anyone storing scrap tires shall maintain mosquito control as follows:
 - (1) One or more of the following shall be done to control mosquitos:
 - (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."
12. The Butler County Health Department is not on the Director's approved list and is not authorized to enforce Ohio's solid waste laws within its jurisdiction.
13. On August 7, 2013, Ohio EPA's SWDO-DMWM ("SWDO-DMWM") received a complaint from the Trenton Police Department regarding open dumping of solid waste and scrap tires at Respondent's Property.
14. On October 17, 2013, SWDO-DMWM inspected the Property in response to the complaint and observed open dumping of solid waste and an estimated 500 scrap tires, in violation of OAC Rule 3745-27-05(C) and OAC Rule 3745-27-60(B)(1).
15. On October 29, 2013, SWDO-DMWM informed Respondent of these violations in a notice of violation ("NOV") letter.
16. On July 27, 2015, Ohio EPA's SWDO-DMWM conducted a follow up inspection of the Property and observed open dumping of solid waste and increased the estimate of open dumped scrap tires to 1,000, in violation of:

- A. ORC Section 3734.03 and OAC Rule 3745-27-05(C) – open dumping of solid waste to include scrap tires; and
- B. OAC Rule 3745-27-60(B) – storage of scrap tire outside or inside a trailer, vehicle or building such that it is deemed a nuisance, a hazard to public health or safety, or fire hazard; and (B)(1) – failure to maintain sufficient drainage such that water does not collect in the area where scrap tires are stored.

On September 16, 2015, Ohio EPA informed Respondent of these violations in a NOV letter.

17. On October 15, 2015, Ohio EPA's SWDO-DMWM conducted another follow up inspection of the Property and observed open dumping of solid waste and an estimated 1,000 scrap tires, in violation of Ohio's open dumping and scrap tire laws and rules:

- A. ORC Section 3734.03 and OAC Rule 3745-27-05(C) – open dumping of solid waste to include scrap tires; and
- B. OAC Rule 3745-27-60(B) – storage of scrap tire outside or inside a trailer, vehicle or building such that it is deemed a nuisance, a hazard to public health or safety, or fire hazard;
- C. OAC Rule 3745-27-60(B)(1) – failure to maintain sufficient drainage such that water does not collect in the area where scrap tires are stored; and
- D. OAC Rule 3745-27-60(C) - 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."

On October 23, 2015, Ohio EPA informed Respondent of these violations in a NOV letter.

18. There are approximately 300 cubic yards of solid waste and 1,000 scrap tires open dumped on the Property.
19. 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.
20. 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, given:
 - a. the potential harm caused by approximately 1,000 scrap tires open dumped on the Property that provide a breeding ground for mosquitoes as the tires have not been kept dry or treated with applications of pesticide or larvicide; and
 - b. the presence of nursing homes, daycare facilities, an elementary school, and a housing development within a 2 mile radius.
21. 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, 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. 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."
22. 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."

23. 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. Upon the effective date of these Orders, Respondent shall cease open dumping of solid waste, including scrap tires, on the Property and shall comply with ORC Chapter 3734. and OAC Chapter 3745-27.
2. Within thirty (30) days after the effective date of these Orders, Respondent shall remove or cause the removal and proper disposal of all solid waste, other than the scrap tires open dumped on the Property, at a licensed solid waste disposal facility.
3. Respondent shall obtain receipts from the solid waste disposal facility, indicating weight or volume of solid waste disposed. Respondent shall forward such documentation to Ohio EPA's SWDO-DMWM, at the address found in these Orders under Section IX., Notice, within fourteen days after completion of Order No. 2, above.

4. Within thirty (30) days after the effective date of these Orders, Respondent shall implement mosquito control measures at the Property pursuant to OAC Rules 3745-27-60(C)(1) and (C)(2).
5. Within thirty (30) days after the effective date of these Orders, Respondent shall remove or cause the removal of approximately 250 tires from the Property including, but not limited to, scrap tires dumped onto the ground, partially buried and buried scrap tires, and shall 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;
 - b. to such a facility in another state operating in compliance with the laws of the state in which it is located; or
 - c. to any other solid waste disposal facility in another state that is operating in compliance with the laws of that state.
6. Not later than sixty (60) days after the effective date of these Orders, Respondent shall remove or cause the removal of approximately 250 tires and arrange for their transportation by a registered scrap tire transporter to a facility of the type designated in Order No. 5.
7. Not later than ninety (90) days after the effective date of these Orders, Respondent shall remove or cause the removal of approximately 250 tires and arrange for their transportation by a registered scrap tire transporter to a facility of the type designated in Order No. 5.
8. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of all remaining scrap tires such that all scrap tires are removed from the Property and arrange for their transportation by a registered scrap tire transporter to a facility of the type designated in Order No. 5.
9. Respondent shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume or number of scrap tire received. Respondent shall forward such documentation to Ohio EPA's SWDO-DMWM, at the address found in these Orders under Section IX, Notice, within fourteen days after each round of tire removal according to Order Nos. 5, 6, 7, and 8, above.

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 from Respondent: "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 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: DMWM Supervisor

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

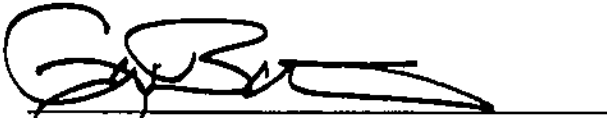
and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapters 3734. or any other applicable law in the future. Nothing herein shall restrict 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:

Ohio Environmental Protection Agency

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

Craig W. Butler
Director