

OHIO E.P.A.

SEP 18 2001

ENTERED DIRECTOR'S JOURNAL

Date Issued: SEP 18 2001

Date Effective: SEP 18 2001

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of: :
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 :
J. McCoy Lumber :
2 Sycamore Street :
Peebles, OH 45660 :

Director's Final Findings
and Orders

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to Jack McCoy ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under sections 3734.13 and 3745.01 of the Ohio Revised Code ("ORC").

II. PARTIES

These Orders shall apply to and be binding upon the Respondent, and his heirs, assigns and successors in interest. No changes in ownership relating to the Property, as hereafter defined, will in any way alter the Respondent's responsibilities under these Orders. The Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734 and Ohio Administrative Code ("OAC") Chapter 3745-27.

IV. FINDINGS OF FACT

The Director has determined the following findings of fact:

1. Respondent owns the 2-3 acre former stone quarry (the "Property") located off Stella Road, Adams County, Ohio, near the Village of Peebles. The Property is a portion of a larger parcel, which is recorded as Parcel Number 58 in the Adams County Record of Deeds.
2. ORC Section 3734.05 provides that "no person . . . shall maintain a solid waste facility without a license."
3. The Property is an unlicensed and unpermitted disposal facility where solid waste and construction and demolition debris ("C&DD") have been disposed in violation of ORC Chapter 3734, OAC Chapter 3745-27, and OAC Chapter 3745-37.

V. ORDERS

1. Upon the effective date of these orders, the Respondent shall immediately cease acceptance of all waste material, including C&DD and solid waste, at the Property.
2. Within 180 days after the effective date of these Orders, weather permitting, the Respondent shall remove all waste material from the Property and dispose of all waste at a licensed solid waste disposal facility. The Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of wastes disposed.
3. Within fourteen (14) days after completion of Order No. 2, the Respondent shall submit to Ohio EPA a written notice of completion, along with documentation of proper removal and disposal, including receipts from the disposal facility.
2. Within ninety (90) days after the effective date of these Orders, the Respondent shall pay Ohio EPA the amount of \$1,000.00 cash 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 hazardous waste cleanup fund created under ORC Section 3734.28. Payment shall be made by tendering a certified check in the stated amount to Ohio EPA, Attention: Vicki Galilei, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, made payable to "Treasurer, State of Ohio," and by submitting a copy of the check to Jim Vinch, Legal, Ohio EPA.
3. Within ninety (90) days after the effective date of these Orders, the Respondent

shall perform the following Supplemental Environmental Projects totaling \$10,000.00, as follows:

- A. Respondent shall pay to the Village of Peebles the sum of \$2,525.00 to fund the purchase of ten (10) litter bins manufactured by Upbeat, Inc. Respondent shall provide to Ohio EPA Legal, Attn: Solid Waste Legal Supervisor, P.O. Box 1049, Columbus, Ohio 43216-1049 a copy of the canceled check or other receipt evidencing the payment of \$2,525.00 to the Village of Peebles.
- B. Respondent shall pay to the Adams County Litter Control Agency ("Adams County"), 116 West Mulberry Street, West Union, Ohio 45693 the sum of \$7,475.00 to be used by Adams County for such purposes as it deems necessary to further the mission of its office in controlling litter and solid waste within the county. Respondent shall provide to Ohio EPA Legal, Attn: Solid Waste Legal Supervisor, P.O. Box 1049, Columbus, Ohio 43216-1049 a copy of the canceled check or other receipt evidencing the payment of \$7,475.00 to Adams County.

VI. TERMINATION AND SATISFACTION

The Respondent's obligations under these Orders shall terminate when the Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA, Division of Solid and Infectious Waste Management, that all obligations under these Orders have been performed and Ohio EPA, Division of Solid and Infectious Waste Management, acknowledges, in writing, Ohio EPA's acceptance of this certification and demonstration.

This certification shall be submitted by the Respondent and shall be signed by the Respondent. The certification shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

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 signatory to these Orders, or for any liability arising out of or relating to the operation of the Respondent's 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 federal, state, and local laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Respondent's activities at the Property or the condition of the Property.

IX. NOTICE

All documents demonstrating compliance with these Orders and all other documents required under these Orders to be submitted to Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2195 Front Street
Logan, OH 43138

and

Adams County Health Department
Attn: Director of Environmental Health
116 West Mulberry Street
West Union, OH 45693

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

X. RESERVATION OF RIGHTS

Except as stated in Section XI, 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 penalties against the Respondent for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful

authority to require the Respondent to perform additional activities pursuant to ORC Chapter 3734 and/or 3714 or any other applicable law in the future. Nothing herein shall restrict the right of the 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 the 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. 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 those violations addressed in these Orders, the Respondent agrees that these Orders are lawful and reasonable, that the items and time frames provided for compliance herein are reasonable and that the Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for the Respondent's liability for the violations cited herein.

The Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and the Respondent hereby waives any and all rights it may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and the Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, the Respondent retains the right to intervene and participate in such appeal. In such an event, the Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

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XII. SIGNATORIES

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

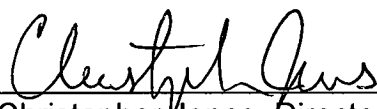
IT IS SO AGREED:

Jack McCoy d/b/a J. McCoy Lumber



09-12-01
Date

Ohio Environmental Protection Agency



Christopher Jones, Director