



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

September 26, 2016

Boss Property Management
1800 19th Street NE
Canton, Ohio 44714

**Re: Wilbur Olmstead /Boss Property Management, LLC
Director's Final Findings and Orders (DFFO)
DFFO
Scrap Tires
Stark County
ST021208**

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 Boss Property Management, LLC.

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, appearing to read "Brian Dearth", is written over a horizontal line.

Brian Dearth, Administrative Officer 1
Division of Materials & Waste Management

Enclosure

ec: Carl Mussenden, DMWM, CO
Kelly Jeter, DMWM, CO
Teri Finrock, Legal
Troy Harter, Legal
Bruce McCoy, DMWM, CO
Jarnal Singh, DMWM, NEDO
Karen Naples, DMWM, NEDO

OHIO E.P.A.

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

SEP 26 2011
ENTERED DIRECTOR'S JOURNAL

In the Matter Of

Boss Property Management, LLC : Director's Final Findings
1800 19th Street NE : and Orders
Canton, Ohio 44714 :

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Boss Property Management, LLC ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3714.12, 3734.13 and 3734.85.

II. PARTIES

These Orders shall apply to and be binding upon Respondent and their 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 used in ORC Chapters 3714 and 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the current owner of the parcel of land located at 1800 19th Street NE, Canton, Ohio, identified by the Stark County Auditor as Parcel Identification Number 10002017, the "Property."
2. Respondent is a "person" as that term is defined in ORC Sections 3714.01(H) and 3734.01(G), and in Ohio Administrative Code ("OAC") Rules 3745-27-01(P)(3) and 3745-400-01(DD).
3. Respondent is an "owner" as that term is defined in OAC Rules 3745-27-01(O)(7) and 3745-400-01(EE).

4. There are currently an estimated 25,000 scrap tires illegally disposed on the Property.
5. There are currently numerous piles of railroad ties scattered throughout the property.
6. The Property is not licensed or permitted as a scrap tire collection facility, a solid waste disposal facility, or a construction and demolition debris ("C&DD") facility.
7. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and "solid waste" in OAC Rule 3745-27-01(S)(23).
8. 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."
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. ORC Section 3734.01(l) 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"
11. 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."
12. ORC § 3734.02(C) states, in pertinent part, "no person shall establish a new solid waste facility... without submitting an application for a permit with accompanying detail plans, specifications, and information regarding the facility and method of operation and receiving a permit issued by the director(.)"

13. ORC § 3734.05(A) states, in pertinent part, "no person shall operate or maintain a solid waste facility without a license issued under this division by the board of health of the health district in which the facility is located(.)"
14. ORC § 3734.06(A) states, in pertinent part, "[n]o person shall operate or maintain a construction and demolition debris facility without an annual construction and demolition debris facility operation license issued by the board of health of the health district in which the facility is located or, if the facility is located in a health district that is not on the approved list under section 3714.09 of the Revised Code, from the director of environmental protection."
15. OAC Rule 3745-37-01(A) states, "No person shall conduct municipal solid waste landfill, industrial solid waste landfill, residual solid waste landfill, compost facility, transfer facility, infectious waste treatment facility, or solid waste incineration facility operations without possessing a separate, valid license for each such operation, as required by Chapter 3734. of the Revised Code and the Administrative Code rules adopted thereunder. Each license shall be obtained from the board of health in the health district in which the facility is located, or by the director, if the director has assumed the licensing function for that health district."
16. OAC Rule 3745-27-60(B)(1) 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" where "sufficient drainage shall be maintained such that water does not collect in the area where scrap tires are stored."
17. OAC Rules 3745-27-60(C)(1) and (2) state, pertinent part, "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."
18. 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, Dengue Fever, and Zika virus.
19. ORC Section 3714.06(a) states in pertinent part that "[n]o person shall operate or maintain a construction and demolition debris facility without an annual construction and demolition debris facility operation license issued by the board of health of the health district in which the facility is located"

20. OAC Rule 3745-37-01(C) states in pertinent part, "No person shall establish, modify, operate or maintain a construction and demolition debris facility without a construction and demolition debris facility license issued by the licensing authority except as otherwise specified in this rule. An application for a construction and demolition debris facility license shall be made in accordance with Chapter 3745-37 of the Administrative Code"
21. OAC Rule 3745-400-01(G) states, in pertinent part, "'[c]onstruction and demolition debris facility' or 'facility' means any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris."
22. OAC Rule 3745-400-04(B) states, in pertinent part, "[n]o 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."
23. "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"
24. The railroad ties are wastes disposed on the Property that have not been evaluated under OAC rule 3745-52-11 to determine whether they are hazardous waste. If not hazardous, railroad ties are considered to be construction and demolition debris because they are the remnants of manmade physical structures.
25. Respondent has created an unpermitted, unlicensed "solid waste disposal facility" and "open dump", as those terms are defined in OAC Rules 3745-27-01(S)(25) and (O)(3), respectively, in violation of ORC Sections 3734.03 and 3734.05(A) and OAC Rule 3745-27-05(C). Respondent has also created an unlicensed C&DD facility as that term is defined in OAC Rule 3745-400-01(G) in violation of ORC 3714.06(A) and OAC Rule 3745-400-04(B).
26. On August 10, 2015, and December 7, 2015, Ohio EPA conducted inspections of the Property and observed scrap tires, other miscellaneous solid waste, and potentially C&DD scattered throughout the Property, and cited the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires and miscellaneous solid wastes;
 - b. OAC Rule 3745-400-04(B) for allowing illegal disposal of Cⅅ
 - c. ORC Section 3734.02(C) for establishing solid waste facility without submitting and receiving a permit issued by the Director;
 - d. ORC Section 3714.06(A) for operating a construction and demolition debris facility without an annual license;
 - e. ORC Section 3734.05(A) for operating a solid waste facility without a license;

- f. OAC Rules 3745-37-01(A) and (C) for establishing a solid waste and construction and demolition debris facility without a construction and demolition debris facility license.

These violations were documented in a Notice of Violation letters from the Ohio EPA dated September 15, 2015, and December 9, 2015.

- 27. Given that scrap tires constitute a breeding ground for mosquitos, and considering the potential that a tire fire could occur, 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.
- 28. 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, 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.”
- 29. ORC 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.”
- 30. 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.”

31. On July 27, 2016, Ohio EPA conducted an inspection on the Property and again observed numerous piles of railroad ties scattered throughout. A waste evaluation for the railroad ties has not been provided by Respondent to Ohio EPA to date.
32. The Director has determined that the Respondent has violated OAC rule 3745-52-11 for failure to determine whether the railroad ties disposed at the Property were hazardous waste.

V. ORDERS

Respondent shall achieve compliance with ORC Chapters 3714. and 3734., and the rules promulgated thereunder according to the following compliance schedule:

1. Not later than ten (10) 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), until all scrap tires have been removed from their Property. Respondent shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3) to Ohio EPA Northeast District Office within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.
2. Upon the effective date of these Orders, Respondent shall cease acceptance and disposal of all solid wastes, including scrap tires, at the Property and shall comply with ORC Chapter 3734. and OAC Chapter 3745-27.
3. Upon the effective date of these Orders, Respondent shall cease acceptance and disposal of all C&DD at the Property and shall comply with the provisions of ORC Chapter 3714. and OAC Chapter 3745-400.
4. Not later than thirty (30) days after the effective date of these Orders, Respondent shall evaluate the railroad ties pursuant to OAC rule 3745-52-11 and shall submit copies of that evaluation via regular mail to: Ohio EPA, Northeast District Office, Division of Environmental Response and Revitalization, Attn: Hazardous Waste Manager, 2110 East Aurora Road, Twinsburg, Ohio 44087.
5. Not later than thirty (30) days after performance of the waste evaluation pursuant to Order No. 4 of these Orders, if the analytical results show the railroad ties are hazardous waste, Respondent shall manage all railroad ties offsite to a facility authorized to receive hazardous waste. If the analytical results show the railroad ties are not hazardous waste, Respondent shall manage all railroad ties in accordance with Order No. 7 of these Orders.
6. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of all solid waste, excluding scrap tires, from the Property and dispose of all solid waste, excluding scrap tires, at a licensed solid waste disposal facility. Respondent shall obtain

disposal receipts from the licensed solid waste disposal facility indicating weight or volume of solid waste disposed of, excluding scrap tires. Respondent shall forward such documentation to Ohio EPA Northeast District Office on a monthly basis by the 10th day of each month until receipts documenting that all solid waste has been appropriately disposed have been provided to Ohio EPA.

Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent may remove or cause the removal of all solid waste, excluding scrap tires, from the Property to a location for proper recycling only if first authorized in writing by Ohio EPA.

7. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of all C&DD from the Property and dispose of all C&DD at a licensed C&DD facility or at a licensed solid waste disposal facility. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility and/or the licensed C&DD facility indicating weight or volume of C&DD disposed. Respondent shall forward such documentation to Ohio EPA Northeast District Office on a monthly basis by the 10th day of each month until receipts documenting that all C&DD has been appropriately disposed have been provided to Ohio EPA.

Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent may remove or cause the removal of all C&DD from the Property to a location for proper recycling only if first authorized in writing by Ohio EPA.

8. If any solid waste, excluding scrap tires, and C&DD at the Property cannot be segregated, then all such unsegregated material shall be disposed of at a licensed solid waste disposal facility within one hundred twenty (120) days of the effective date of these Orders. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of unsegregated material disposed of, excluding scrap tires. Respondent shall forward such documentation to Ohio EPA Northeast District Office on a monthly basis by the 10th day of each month until receipts documenting that all solid waste and C&DD have been appropriately disposed have been provided to Ohio EPA.

9. 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, monocell, monofill, or recovery facility licensed under ORC Section 3734.81 in Ohio, 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. Scrap tire removal shall be, at a minimum, in accordance with the following schedule:

- a. Within 30 days of the effective date of the Orders, Respondent shall remove, transport, and dispose of at least 6,250 scrap tires, and
 - b. Within 60 days of the effective date of the Orders, Respondent shall remove, transport, and dispose of at least 6,250 additional scrap tires; and
 - c. Within 90 days of the effective date of the Orders, Respondent shall remove, transport, and dispose of at least 6,250 additional scrap tires; and
 - d. Within 120 days of the effective date of the Orders, Respondent shall remove, transport, and dispose of all remaining scrap tires.
10. Respondent shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume and number of scrap tires received. Respondent shall forward such documentation to Ohio EPA Northeast District Office on a monthly basis by the 10th day of each month, until receipts documenting that all scrap tires have been removed from the Property, lawfully transported, and disposed have been provided to Ohio EPA.

VI. TERMINATION

Respondent 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/we 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
Northeast District Office,
Division of Materials and Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
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:



Craig W. Butler, Director