



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

October 5, 2016

Mr. William E. Marsteller  
Crab Creek Industrial Park, Inc.  
2771 Henn Hyde Road, NE  
Warren, OH 44484

Re: **K & M Shingle Recycling / Crab Creek Industrial Park  
Director's Final Findings and Orders (DFFO)  
DFFO  
Construction & Demolition Debris  
Mahoning County  
CDDL019347**

**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 K & M Shingle Recycling / Crab Creek Industrial Park, Inc.

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., 17<sup>th</sup> Floor  
Columbus, Ohio 43215

If you have any questions, please contact Teri Finrock at (614) 644-3037.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory Nichols", is written over a light blue horizontal line.

Gregory Nichols  
Division of Materials & Waste Management

ec: Colum McKenna, Northeast District Office – DMWM  
Jarnal Singh, Northeast District Office - DMWM

OHIO E.P.A.

OCT -5 2016

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

George Kuriatnyk	:	
K&M Shingle Recycling	:	
301 Kline Street	:	<u>Director's Final</u>
Girard, OH 44420	:	<u>Findings and Orders</u>

and

William E. Marsteller	:
Crab Creek Industrial Park, Inc.	:
2771 Henn Hyde Road, N.E.	:
Warren, Ohio 44484	:

Respondents

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to George Kuriatnyk dba K&M Shingle Recycling and William E. Masteller dba Crab Creek Industrial Park, Inc. ("Respondents") 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, 3734.85, and 3745.01

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondents and their successors in interest liable under Ohio law. No change in ownership of the Property (as herein after defined) shall in any way alter Respondents' obligations under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined 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 Marsteller dba Crab Creek Industrial Park, Inc. ("Marsteller") is the owner of 26.91 acres of land identified by the Mahoning County Auditor's Office as parcel I.D. 53-012-0-116.00-0 (the "Property"). The term "owner" or "property

owner" is defined in Ohio Administrative Code ("OAC") Rule 3745-400-01(EE) and OAC Rule 3745-27-01(O)(7). The Property is located at 4136 East Dennick Avenue, Youngstown, Mahoning County, Ohio.

2. In accordance with ORC Sections 3714.01(C) and 3734.01(N), "Facility" means any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris and solid waste.
3. Respondent Kuriatnyk is the "operator" or "facility operator" as that term is defined in OAC Rule 3745-400-01(I) and OAC Rule 3745-27-01(O)(5).
4. Respondents are each a "person" as that term is defined in ORC Sections 3714.01(H) and 3734.01(G) and OAC Rules 3745-400-01(DD) and 3745-27-01(P)(3).
5. The Property is neither licensed nor permitted as a C&DD disposal facility, a scrap tire collection facility or a solid waste disposal facility.

#### **C&DD Findings**

6. "Construction and demolition debris" is defined in ORC Section 3714.01(C) as "...those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways...."
7. Pursuant to OAC Rule 3745-37-01(C), "No person shall operate or maintain a construction and demolition debris facility without a construction and demolition debris facility operating license issued by the licensing authority except as otherwise specified in this rule."
8. As defined in OAC Rule 3745-400-01(S): "Illegal disposal" means "the disposal of construction and demolition debris at any place other than a construction and demolition debris disposal facility operated in accordance with Chapter 3714. of the Revised Code, and Chapters 3745-400 and 3745-37 of the Administrative Code or a solid waste disposal facility operated in accordance with Chapter 3745-27 of the Administrative Code, and licensed in accordance with Chapter 3745-37 of the Administrative Code, or as otherwise authorized by this Chapter."
9. OAC Rule 3745-400-04(B) states that "[n]o person shall conduct or allow illegal disposal of construction and demolition debris."

### **Solid Waste/Scrap Tire Findings**

10. 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."
11. Pursuant to ORC 3734.02(C), ". . . [N]o person shall establish a new solid waste facility . . . or modify an existing 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..."
12. Pursuant to ORC 3734.05(A)(1), ". . . [N]o 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 or by the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code."
13. Pursuant to OAC Rule 3745-37-01(A), "No person shall conduct municipal solid waste landfill . . . operations without possessing a . . . valid license . . . as required by Chapter 3734. of the Revised Code and the Administrative Code rules adopted thereunder. Each license shall be obtained from . . . the director, if the director has assumed the licensing function for that health district."
14. 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."
15. 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."
16. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).

17. The open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C), which respectively state: ... "[n]o person shall dispose of solid wastes by ... 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."
18. 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.
19. OAC Rule 3745-27-60(C) provides guidelines for mosquito control when scrap tires are stored outdoors, including application of pesticide and/or larvicide and prevention of the accumulation of liquid inside the tires.
20. In accordance with OAC Rule 3745-27-60(D), the owner or operator shall apply pesticide or larvicide within twenty-four hours or the next business day upon inspection and written notification by Ohio EPA or the approved health district after discovery of the presence of adult mosquitoes or mosquito larvae.
21. On February 18, 2011, the city of Youngstown issued a zoning permit to Respondent Kuriatnyk to recycle shingles at the Property.
22. Respondent Kuriatnyk began accepting shingles for recycling at the Property in 2011. However, Respondent Kuriatnyk failed to recycle the 11,502 cubic yards of asphalt shingles. Therefore, the shingles became illegally disposed construction and demolition debris.
23. There are currently an estimated 1,000 scrap tires illegally disposed on the Property.
24. Dimensional lumber, windows, scrap metal, sheets of plywood, doors, incidental construction packaging, mattresses, pallets, and other miscellaneous C&DD and solid waste are currently illegally disposed and open dumped on the Property.
25. On June 22, 2012, the city of Youngstown revoked the zoning permit previously issued to Respondent Kuriatnyk.
26. The Youngstown City Health District is not on the director's list of approved health departments. Therefore, Ohio EPA has jurisdiction to enforce Ohio's C&DD and

solid waste statutes and rules.

27. On September 13, 2012, Ohio EPA responded to an open dumping complaint at the Crab Creek Industrial Park and observed the following violations:
- a. ORC Section 3714.06(A) - operating a C&DD facility without a license;
  - b. OAC Rule 3745-37-01(C) - operating or maintaining a C&DD facility without a C&DD facility operating license issued by the licensing authority;
  - c. OAC Rule 3745-400-04(B) - conducting or allowing illegal disposal of C&DD;
  - d. ORC Section 3734.02(C) – operating a solid waste facility without a permit issued by the director;
  - e. ORC Section 3734.05(A)(1) and OAC Rule 3745-37-01(A) - operating a solid waste facility without a license issued by the director; and
  - f. ORC Section 3734.03 and OAC Rule 3745-27-05(C) – conducting or permitting open dumping solid waste.

Ohio EPA notified Respondents of these violations in a notice of violation (“NOV”) letter dated October 4, 2012.

28. Ohio EPA has continued inspecting the Property and observing violations regarding illegal disposal of C&DD (shingles) and open dumping of solid waste (including scrap tires):
- a. ORC Section 3714.06(A) - operating a C&DD facility without a license;
  - b. OAC Rule 3745-37-01(C) - operating or maintaining a C&DD facility without a C&DD facility operating license issued by the licensing authority;
  - c. OAC Rule 3745-400-04(B) - conducting or allowing illegal disposal of C&DD;
  - d. ORC Section 3734.02(C) – operating a solid waste facility without a permit issued by the director;
  - e. ORC Section 3734.05(A)(1) and OAC Rule 3745-37-01(A) - operating a solid waste facility without a license issued by the director; and
  - f. ORC Section 3734.03 and OAC Rule 3745-27-05(C) – conducting or permitting open dumping solid waste;
  - g. OAC Rule 3745-27-60(B)(7)(e) – failure to maintain sufficient fire lanes to allow emergency vehicles access at all times around scrap tire piles; and
  - h. OAC Rule 3745-27-60(C)(1) - (C)(3) – failure to maintain mosquito control measures.

Ohio EPA has notified Respondents of these violations through NOV letters dated March 26, 2013 through July 20, 2016.

30. The Director has determined that the accumulation of an estimated 11,502 cubic yards of asphalt shingles and 1,000 scrap tires on the Property constitute a danger to the public health or safety or to the environment, given:
- a. The potential harm caused by a fire consuming the shingles and tires and causing dense smoke and fire residuals;
  - b. 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;
  - c. The proximity of the Property to Crab Creek, which borders the Property on the east and is a tributary to the Mahoning River which is approximately two miles to the south;
  - d. The proximity of the Property to 50 private drinking wells, which are located within a two-mile radius, with the closest located approximately 800 feet from the southern boundary of the Property; and
  - e. Approximately 15,000 people reside in northeastern Youngstown and are within a two-mile radius of The Property.
31. 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.”

## V. ORDERS

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

1. Use best efforts to discourage illegal disposal of C&DD and open dumping of solid waste including scrap tires.
2. Upon the effective date of these Orders, Respondents shall cease illegal disposal of C&DD, including asphalt shingles, and open dumping of solid wastes, including scrap tires, on the Property and shall comply with ORC Chapters 3714 and 3734 and OAC Chapters 3745-400 and 3745-27.
3. Within thirty (30) days after the effective date of these Orders, Respondents shall remove all of the shingles and miscellaneous C&DD illegally disposed on the Property and dispose of it at an appropriately licensed C&DD disposal facility or a licensed solid waste disposal facility.
4. Within thirty (30) days after the effective date of these Orders, Respondent shall remove or cause the removal of all miscellaneous solid waste, excluding scrap tires, from the Property and dispose of all solid waste, excluding scrap tires, at a licensed solid waste disposal facility.
5. Respondents shall obtain receipts from the licensed solid waste disposal facility and/or the licensed C&DD facility indicating weight or volume of C&DD and miscellaneous solid waste disposed. Respondents shall forward such documentation to Ohio EPA's NEDO-DMWM office at the address found in these Orders under Section IX., Notice, within fourteen days after the removal and disposal according to Orders 2 and 3, above.
6. 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) and (D).
7. Respondents shall continue to implement mosquito control measures pursuant to OAC Rules 3745-27-60(C)(1) and (C)(2) at least monthly or in accordance with the pesticide or larvicide's directions for use until all scrap tires have been removed.
8. Within fourteen (14) days after each application of pesticide or larvicide, Respondents shall provide receipts of mosquito control records for Ohio EPA review.
9. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of all scrap 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, to a scrap tire storage, monofill, monocell, 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 thirty (30) days after the effective date of these Orders, Respondents shall remove, transport, and dispose of at least 250 scrap tires.
  - b. Within sixty (60) days after the effective date of these Orders, Respondents shall remove, transport, and dispose of at least 250 scrap tires.
  - c. Within ninety (90) days after the effective date of these Orders, Respondents shall remove, transport, and dispose of at least 250 scrap tires.
  - d. Within one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove, transport, and dispose of all remaining scrap tires.
10. Respondents shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume or number of scrap tires received. Respondents shall forward such documentation to Ohio EPA's NEDO-DMWM office, at the address found in these Orders under Section IX., Notice, within fourteen days after each round of tire removal according to Order 9, above.

## **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 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 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 Respondents.

## **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 Respondents 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 44087-1924  
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 Respondents 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 Respondents to perform additional activities pursuant to ORC Chapters 3734. or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. 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 these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

Director's Final Findings and Orders  
George Kuriatnyk dba K&M Shingle Recycling  
William E. Marsteller dba Crab Creek Industrial Park, Inc.  
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**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