



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

October 31, 2016

Jerald D. Hoot and Shirley Hoot
dba Jerry's Auto Salvage
26076 CR J
Archbold, OH 43502

**Re: Jerry's Auto Salvage
Director's Final Findings and Orders (DFFO)
DFFO
Scrap Tires
Fulton County
ST019585**

Subject: Final Findings and Orders of the Director

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Jerry D. and Shirley Hoot dba Jerry's Auto Salvage.

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

Sincerely,

Gregory Nichols, Administrative Unit
Division of Materials & Waste Management

Enclosure

ec: Melinda Berry, DMWM, CO
Kelly Jeter, DMWM, CO
Bruce McCoy, DMWM, CO
Janice Church, DMWM, CO
Troy Harter, Legal
Teri Frinfrock, Legal
Michael Reiser, DMWM, NWDO
Curtis DeLong, DMWM, SWDO

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OHIO E.P.A.
N.W.D.O.

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT 31 2016
In the Matter Of:
ENTERED DIRECTOR'S JOURNAL

Jerald D. Hoot and
Shirley Hoot
dba Jerry's Auto Salvage
26076 CR J
Archbold, Ohio 43502

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Director's Final Findings
and Orders

Respondents

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Jerald D. Hoot and Shirley Hoot ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.13, 3734.85, and 3745.01.

II. PARTIES

These Orders shall apply to and be binding upon Respondents 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 Respondents' 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 makes the following findings:

1. Respondents are the owners of a 34.43 acre tract of land identified by the Fulton County Auditor's Office as parcel number 09-019144-00.000 and recorded in the Fulton County Recorder's Office book no. 228, page 3363 by Warranty Deed on July 23, 2003. The parcel is located at 26076 CR J, Archbold (Fulton County), Ohio 43502 and has the same tax mailing address (the "Property").

2. Respondents are each 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. Respondents are each an "owner" as that term is defined in OAC Section 3745-27-01(O)(7).
4. 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).
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 open dumping of scrap tires is a violation of ORC Section 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."
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 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
9. There are currently an estimated 23,544 scrap tires open dumped on the ground at the Property.
10. ORC Section 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(.)”

11. 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.
 - f. OAC Rule 3745-27-60(B)(11) states, “[f]ire breaks shall be maintained free of all combustible material including but not limited to weeds, leaves, and debris. Fire breaks may include well mowed grass if the fire break also include a gravel or paved fire lane at least twenty feet wide.”
12. The Fulton County Health Department (“Health Department” or “Board of Health”) is on the Director’s list of approved health districts pursuant to OAC Rule 3745-37-08.

13. On July 13, 2015 the Fulton County Health Department issued a Reinstatement of Exemption to The Scrap Tire Transporter Registration pursuant to OAC Rule 3745-27-54(A)(2) in order to allow the Respondents to remove the scrap tires from the Property. This Reinstatement of Exemption included a drawdown schedule of a minimum of 300 scrap tires per month or approximately 1,050 scrap tires per quarter.
14. By document dated August 25, 2015, the Board of Health issued a Public Health Order to Respondents, including a quarterly drawdown schedule for tire removal in order to resolve the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) – open dumping;
 - b. ORC Section 3734.81(A) – operation of a scrap tire facility without a license;
 - c. ORC Section 3734.76(C) and OAC Rule 3745-27-61(B) – establishing a new scrap tire storage facility without first submitting an application for a scrap tire storage facility registration certificate;
 - d. ORC Section 3734.02(C) – establishing a new solid waste facility without submitting an application for a permit;
 - e. OAC Rule 3745-27-60(B)(7)(a) – failure to maintain scrap tire storage piles with a basal area not greater than two thousand five hundred feet with the total number of scrap tires not exceeding the amount specified in OAC Rule 3745-27-61(A);
 - f. OAC Rule 3745-27-60(B)(7)(c) – failure to separate scrap tire storage piles of five hundred scrap tires or less from buildings and other storage piles by at least twenty-five feet;
 - g. OAC Rule 3745-27-60(B)(7)(d) - failure to separate scrap tire storage piles of more than five hundred scrap tires from other storage piles and from buildings and structures by a fire break with a width equal or greater than fifty-six feet in accordance with the fire break chart in appendix I to OAC Rule 3745-27-65;
 - h. OAC Rule 3745-27-60(B)(7)(e) - failure to maintain sufficient fire breaks to allow access of emergency vehicles at all times to, around, and between the scrap tire storage piles and areas; and
 - i. OAC Rule 3745-27-60(B)(11) – failure to maintain fire breaks free of all combustible material including but not limited to weeds, leaves, and debris.
15. Respondents failed to comply with the Public Health Order dated August 25, 2015.
16. In correspondence dated January 26, 2016, the Health Department requested assistance from Ohio EPA to resolve violations of Ohio solid waste statutes and rules regarding open dumping and failure to properly manage scrap tires at the Property.
17. On February 5, 2016, Ohio EPA inspected the Property and observed the following violations of Ohio's solid waste laws and rules:

- a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) – open dumping;
- b. OAC Rule 3745-27-60(B)(7)(a) – failure to maintain scrap tire storage piles with a basal area not greater than two thousand five hundred feet with the total number of scrap tires not exceeding the amount specified in OAC Rule 3745-27-61(A);
- c. OAC Rule 3745-27-60(B)(7)(c) – failure to separate scrap tire storage piles of five hundred scrap tires or less from buildings and other storage piles by at least twenty-five feet;
- d. OAC Rule 3745-27-60(B)(7)(d) - failure to separate scrap tire storage piles of more than five hundred scrap tires from other storage piles and from buildings and structures by a fire break with a width equal or greater than fifty-six feet in accordance with the fire break chart in appendix I to OAC Rule 3745-27-65;
- e. OAC Rule 3745-27-60(B)(7)(e) - failure to maintain sufficient fire breaks to allow access of emergency vehicles at all times to, around, and between the scrap tire storage piles and areas; and
- f. OAC Rule 3745-27-60(B)(11) – failure to maintain fire breaks free of all combustible material including but not limited to weeds, leaves, and debris.

Ohio EPA documented these violations in a notice of violation (“NOV”) letter which was sent to Respondents on February 26, 2016.

18. As of the February 5, 2016 inspection, there was an estimated 23,544 scrap tires (estimated 37,346 Passenger Tire equivalents) open dumped on the ground at the Property.
19. Since the February 5, 2016 inspection, Respondents have removed three loads of tires. Ohio EPA received receipts of disposal from Respondents on March 14, 2016, and April 18, 2016.
20. On April 18, 2016, Ohio EPA received a proposed drawdown of 850 tires per month from Respondents.
21. 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, Zika Virus and Dengue Fever.
22. The February 26, 2016, NOV noted that mosquito treatment was last conducted at the Property on August 21, 2015.
23. 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 the estimated 23,544 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 potential for a tire fire that could cause surface water or ground water contamination.
24. 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."
 25. 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."
 26. 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."

V. ORDERS

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

1. Within thirty (30) days after the effective date of these Orders, Respondents shall employ a commercial pesticide applicator licensed by the Ohio Department of Agriculture. Prior to the application of pesticides the scrap tires shall be surveyed for the presence of adult mosquitoes and/or larvae; and based upon this information, a pesticide and/or larvicide, registered for use for mosquito control by ODA, shall be applied to all scrap tires stored outdoors at no greater than thirty-day intervals or as recommended by the manufacturer or formulator.
2. Respondents shall continue mosquito surveys and applications of pesticide/larvicide until termination of these Orders.
3. Respondents shall 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. Respondents shall make the mosquito control records available for inspection by Ohio EPA during normal operating hours. Respondents shall retain copies of mosquito control records for a minimum period of three years.
4. In the first full calendar month after the effective date of these Orders, Respondents shall have removed and lawfully disposed of a minimum of 800 scrap tires from the Property at a scrap tire storage, monofill, monocell, or recovery facility licensed under ORC Section 3734.81, or to such 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.
5. Respondents shall continue to remove and lawfully dispose of a minimum of 800 scrap tires every subsequent full calendar month until all scrap tires have been lawfully removed and disposed from the Property.
6. By entry into these Orders, Respondents agree to grant access to Ohio EPA, its representatives and contractors for the purpose of removing and disposing of all scrap tires from the Property and spraying for mosquitoes in the event that Respondents fail to comply with the drawdown schedule presented in Orders 4 and 5. This authorization and consent shall remain in full force and effect until all necessary and appropriate preventative and/or corrective action has been completed at the Property by either the owner or by Ohio EPA, its contractors, and its authorized representative.

7. Respondents hereby agree to relinquish any claim of ownership interest in any scrap tires that are removed from the Property.
8. Respondents hereby grant to Ohio EPA temporary rights-of-way and the right to improve existing, or build necessary roads on, over, and across the Property for the purpose of removal of scrap tires located on the Property. At the conclusion of the cleanup of all the scrap tires from the Property, all improvements shall become the property of the Respondents.
9. Respondents hereby agree to hold the Director, his representatives and contractors harmless for all activities associated with removal and disposal of all scrap tires from the Property.

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 Ohio EPA's Chief, 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 from Respondents: "We certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted to Ohio EPA by Respondents seeking termination in accordance with this section 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, Respondents 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 Respondents or the Property.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondents under to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Materials and Waste Management
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398

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

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders. Ohio EPA specifically reserves all rights to recover the public funds expended to address conditions related to the Property by placing a lien on the Property in accordance with ORC Section 3734.85.

XII. 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 the violations specifically cited in these Orders, Respondents consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein, except that Ohio EPA reserves all rights to recover public funds expended to address conditions related to the Property in accordance with ORC Section 3734.85.

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

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

Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

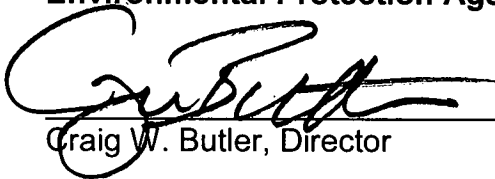
The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

XIV. 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.

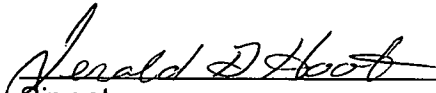
ORDERED AND AGREED:

Environmental Protection Agency

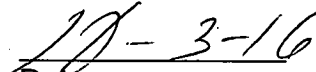


Craig W. Butler, Director

AGREED:



Signature



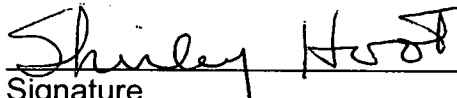
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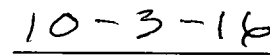
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Title



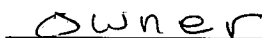
Signature



Date



Printed or Typed Name



Title