



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

December 30, 2016

**Re: Combs Trucking and Land Improvements
Director's Final Findings and Orders (DFFO)
DFFO
Municipal Solid Waste Landfills
Clermont County
MSWL018922**

Mr. Donald Combs
Ms. Anita Combs
1779 Parker Road
Milford, Ohio 45150

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 Mr. Donald Combs and Ms. Anita Combs.

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 Janine Maney 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
Terri Finfrock, Legal
Janine Maney, Legal
Tracy Buchanan, DMWM, SWDO
Toni Carmichael, DMWM, SWDO
Allen Edwards, Clermont County
Robert Wildey, Clermont County Health Department

RECEIVED
OHIO EPA
2016 DEC 30 AM 9:56
BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

LEGAL OFFICE
In the Matter Of

Mr. Donald Combs
Ms. Anita Combs
1779 Parker Road
Milford, Ohio 45150

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Director's Final Findings
and Orders

Respondents

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Donald and Anita Combs ("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 and 3734.85.

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 Properties (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 Chapters 3714 and 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondents are the owners of 0.6 acres of property, identified by the Clermont County Auditor as Parcel Number 11-22-08F-103, and 5.0 acres of property, identified by the Clermont County Auditor as Parcel Number 11-22-08F-114, located at State Route 28, Loveland, Ohio, 45140 [Hereinafter the "Combs' Property"].
2. Respondents are each 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. Brock Donna L. Trustee is the owner of 1.38 acres of property, identified by the Clermont County Auditor as Parcel Number 11-22-08F-107, located at State Route 28, Loveland, Ohio, 45140 [Hereinafter the "Brock Trustee Property"].
4. Albert P. Flaim is the owner of 6.396 acres of property, identified by the Clermont County Auditor as Parcel Number 11-22-08F-113, located at State Route 28, Loveland, Ohio, 45140 [Hereinafter the "Flaim Property"].
5. The Combs' Property, the Brock Trustee Property, and the Flaim Property shall be identified, as appropriate, collectively as the "Properties."
6. None of the Properties are licensed or permitted as a scrap tire collection facility, a solid waste disposal facility, a construction and demolition debris ("C&DD") facility, or any type of legitimate recycling facility.
7. ORC Section 3734.03 states "[n]o person shall dispose of solid wastes by open burning or open dumping, except as authorized by the director of environmental protection in rules adopted in accordance with division (V) of section 3734.01, section 3734.02, or sections 3734.70 to 3734.73 of the Revised Code[.]"
8. ORC Section 3734.01(E) defines solid wastes as follows: "such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, nontoxic, nonhazardous, unwanted fired and unfired, glazed and unglazed, structural products made from shale and clay products, and slag and other substances that are not harmful or inimical to public health, 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."
9. 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(.)"
10. 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(.)"

11. 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.”
12. 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.”
13. OAC Rule 3745-400-04(B) states; in pertinent part, “[n]o person shall conduct or allow illegal disposal of construction and demolition debris.”
14. OAC Rule 3745-279-22(C)(1) states, “Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words ‘Used Oil.’”
15. OAC Rule 3745-279-22(D) states, “Response to releases. Upon detection of a release of used oil to the environment that is not subject to the requirements of Chapter 1301:7-9 of the Administrative Code and which has occurred after October 20, 1998, a generator must perform the following cleanup steps: (1) Stop the release; (2) Contain the released used oil; (3) Clean up and manage properly the released used oil and other materials; and (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.”
16. OAC Rule 3745-52-11 states, in pertinent part, “Any person who generates a waste, as defined in rule 3745-51-02 of the Administrative Code, must determine if that waste is a hazardous waste(.)”
17. 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).
18. 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.”
19. 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.”

20. 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.”
21. 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.”
22. OAC Rules 3745-27-60(C)(1) and (2) state, in 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.”
23. On September 14, 2015, Ohio EPA conducted an inspection of the Properties and observed scrap tires, other miscellaneous burned and unburned solid waste, multiple unlabeled containers that appeared to contain an oil substance, some of which had spilled, and C&DD scattered throughout the Properties, and observed 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 a new solid waste facility without submitting and receiving a permit issued by the Director;
 - d. ORC Section 3734.05(A) for operating a solid waste facility without a license;
 - e. OAC Rule 3745-27-60(B)(1) for storing scrap tires outside without providing for sufficient drainage and maintaining proper mosquito control by storing scrap tires such that water does not accumulate in the scrap tires;

- f. OAC Rules 3745-27-60(C)(1) and (2) for failure to perform mosquito control and provide lawful mosquito control records;
- g. OAC Rule 3745-279-22(C)(1) for failure to label containers containing used oil;
- h. OAC Rule 3745-279-22(D)(1) for failure to manage the released oil properly; and
- i. OAC Rule 3745-52-11 for failure to determine if the material within the containers was hazardous waste.

These violations were documented in a Notice of Violation from the Ohio EPA to the property owner and responsible party, Respondent Donald Combs, dated October 28, 2015.

- 24. 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.
- 25. Given that scrap tires constitute a breeding ground for mosquitos, and given the observation of burned waste on the Combs' Property, considering the potential that a scrap tire fire could occur, and given the proximity of the scrap tire pile to sensitive sub-populations, such as a pre-school and child care center, 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.
- 26. 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."
- 27. On October 27, 2016, Ohio EPA conducted an inspection of the Combs' Property and observed solid wastes open dumped on the Combs' Property, including approximately 215 scrap tires, and observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires and solid wastes;
 - b. ORC Section 3734.02(C) and ORC Section 3734.05(A) for operating a solid waste facility without a permit or a license;
 - c. OAC Rules 3745-27-60(C)(1) and (2) for failing to maintain proper mosquito control measures and for storing scrap tires such that water accumulates in the scrap tires.

These violations were documented in a Notice of Violation from the Ohio EPA to Respondents dated November 30, 2016.

28. On October 27, 2016, Ohio EPA conducted an inspection of the Brock Trustee Property and observed solid wastes open dumped on the Brock Trustee Property, and observed the following violations:
- a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid wastes;
 - b. ORC Section 3734.02(C) and ORC Section 3734.05(A) for operating a solid waste facility without a permit or a license;

These violations were documented in a Notice of Violation from the Ohio EPA to Respondent Donald Combs dated December 2, 2016. Ohio EPA identified Respondent Donald Combs as the person responsible for the open dumping of solid wastes on the Brock Trustee Property.

29. On October 27, 2016, Ohio EPA conducted an inspection of the Flaim Property and observed the following violations:
- a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid wastes;
 - b. ORC Section 3734.02(C) and ORC Section 3734.05(A) for operating a solid waste facility without a permit or a license;

These violations were documented in a Notice of Violation from the Ohio EPA to Respondent Donald Combs dated December 2, 2016. Ohio EPA identified Respondent Donald Combs as the person responsible for the open dumping of solid wastes on the Flaim Property.

V. ORDERS

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

1. Upon the effective date of these Orders, Respondents shall cease acceptance and disposal of all solid wastes, including scrap tires, and C&DD at the Properties and shall comply with ORC Chapter 3734. and OAC Chapter 3745-27.
2. Not later than thirty (30) days after the effective date of these Orders, Respondents shall implement mosquito control measures at the Combs' Property in accordance with the provisions of OAC Rule 3745-27-60(C), until all scrap tires have been removed. Respondents shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3) to Ohio EPA Southwest District Office within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.

3. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of all solid waste, excluding scrap tires, from the Combs' Property and dispose of all solid waste, excluding scrap tires, at a licensed solid waste disposal facility. Respondents shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of solid waste disposed of, excluding scrap tires. Respondents shall forward such documentation to Ohio EPA Southwest 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.
4. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall characterize the waste in the containers located on the Combs' Property, as applicable, pursuant to OAC Rule 3745-52-11.
5. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall:
 - A. label containers located on the Combs' Property containing used oil pursuant to OAC Rule 3745-279-22(C)(1);
 - B. manage the released oil on the Combs' Property properly pursuant to OAC Rule 3745-279-22(D)(1).
6. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of all C&DD from the Combs' Property and dispose of all C&DD at a licensed C&DD facility or at a licensed solid waste disposal facility. Respondents 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. Respondents shall forward such documentation to Ohio EPA Southwest 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.
7. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of scrap tires from the Combs' 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.
8. Not later than ten (10) days after the removal of scrap tires from the Combs' Property, Respondents shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume and number of scrap tires received.

Respondents shall forward such documentation to Ohio EPA Southwest District Office on a monthly basis by the 10th day of each month, until all scrap tires have been removed.

9. Not later than one hundred fifty (150) days after the effective date of these Orders, Respondent Combs shall remove or cause the removal of all solid waste from the Brock Trustee Property and Flaim Property, and dispose of all solid waste at a licensed solid waste disposal facility. Respondent Combs shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of solid waste disposed of. Respondent Combs shall forward such documentation to Ohio EPA Southwest 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.
10. To the extent that any of the Properties to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent(s), Respondent(s) shall use best efforts to secure from such persons access necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent(s) shall be provided to Ohio EPA upon request. If any access required to implement these Orders is not obtained within the time required to perform any obligation under these Orders, Respondent(s) shall notify Ohio EPA in writing, prior to the running of the time required to perform such obligation, that additional access is necessary, and shall identify the steps Respondent(s) took to attempt to obtain access.

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 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 Respondents or the Properties.

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 the Respondents or the Properties.

IX. NOTICE

All documents required to be submitted by Respondents 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
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

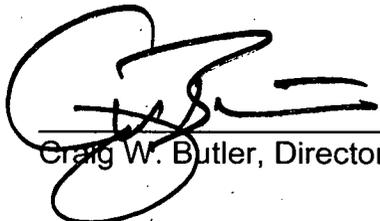
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against the Respondents for noncompliance 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 the Respondents to perform additional activities pursuant to ORC Chapter 3734. or any other applicable law in the future. Nothing herein shall restrict the right of the 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 the 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 the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

IT IS SO ORDERED:



Craig W. Butler, Director