



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

April 28, 2017

Samuel Bass dba CB Tire
416 Kentucky Avenue
Mansfield, Ohio 44905

Re: **CB Tire
Director's Final Findings and Orders (DFFO)
DFFO
Scrap Tires
Richland County
ST019902**

Subject: CB Tire Director's Findings & Orders

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for CB Tire.

If you have any questions, please contact Janine Maney at (614) 644-337.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Dearth". The signature is fluid and cursive.

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

Enclosure

ec: Kelly Jeter, DMWM, CO
Teri Finrock, Legal
Janine Maney, Legal
Carl Mussenden, DMWM, CO
Mike Reiser, DMWM, NWDO
Sue Hardy, DMWM, NWDO

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Samuel Bass	:	<u>Director's Final Findings</u>
dba CB Tire	:	<u>and Orders</u>
416 Kentucky Avenue	:	
Mansfield, Ohio 44905	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

Ohio EPA APR 28 '17
Entered Directors Journal

These Director's Final Findings and Orders ("Orders") are issued to Samuel Bass ("Respondent") 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 Respondent and his 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 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 has determined the following findings:

1. Respondent is the owner of approximately 1 acre of land identified by the Richland County Auditor's Office as parcel number 0250904915000, located at 95 South Illinois Avenue, Richland County, Ohio ("the Property").
2. Respondent operates a tire retail business at the Property.

3. Respondent is 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).
4. Respondent is an "owner" as that term is defined in OAC Section 3745-27-01(O)(7).
5. 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).
6. 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."
7. ORC Section 3734.01(I) defines "open dumping" of scrap tires as the depositing of scrap tires "... 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. 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 provides 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."
9. OAC Rule 3745-27-01(O)(4)(b) defines open dumping in relevant part as, "[t]he 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."
10. OAC Rule 3745-27-61(A)(2)(a) requires an owner or operator to register a scrap tire collection, storage or recovery facility with Ohio EPA, except as specified in (A)(2) to (A)(5).
11. OAC Rule 3745-27-61(A)(2)(a) provides in relevant part: The requirement to obtain a scrap tire collection facility registration certificate does not apply to the

- owner or operator of a premises where tires are sold at retail that meets either of the following: (i) No more than one thousand scrap tires are present any time in an unsecured, uncovered, outdoor location. (ii) Any number of scrap tires are secured in a building or a covered, enclosed container, trailer, or installation.
12. The Property is not registered, permitted or licensed as a scrap tire collection facility, a scrap tire storage facility, a scrap tire recovery facility, a scrap tire monocell or monofill facility, or a solid waste disposal facility.
 13. OAC Rule 3745-27-60(B) provides that the storage of scrap tires in any amount is deemed a nuisance, a hazard to public health or safety, or a fire hazard unless the scrap tires are stored in accordance with the specific standards set forth in OAC Rule 3745-27-60(B)(1) – (B)(11).
 14. On October 27, 2015, Richland County Public Health (the "Board of Health"), which is on the Director's approved list, conducted an inspection of the Property to determine compliance with Ohio's scrap tire laws and rules. The Board of Health found violations of scrap tire storage requirements found in OAC Rule 3745-27-60 as well as violations of OAC Rule 3745-27-61(A)(I) for establishing a scrap tire facility without obtaining a registration and ORC Chapter 3734.81 for operating a scrap tire facility without a license. The Board of Health sent Respondent an NOV letter dated November 11, 2015.
 15. On April 18, 2016 the Board of Health issued Resolution 2016-3 Tire Abatement Board Orders, BOH/EH 2016-3, to Samuel Bass, ordering him to remove 150 scrap tires every 30 days, until such time that all scrap tires have been removed from the Property. In the Board Orders, the Board of Health noted the following violations of Ohio law:
 - a) ORC Section 3734.03 for open dumping of solid waste;
 - b) OAC Rule 3745-27-60(B)(7)(c) for improper storage of scrap tires, specifically for failing to maintain fire lanes;
 - c) OAC Rule 3745-27-60(B)(2) for storing tires within 50 feet of possible ignition sources;
 - d) OAC 3745-27-60(C)(2) for observable mosquito larvae and water in tires;
 - e) OAC Rule 3745-27-61(A) for establishing a scrap tire facility without obtaining a registration or a license pursuant to ORC Section 3734.81.
 16. On June 24, 2016, the Board of Health conducted an inspection of the Property to determine compliance with the Board of Health Tire Abatement Orders issued on April 18, 2016. On July 13, 2016 the Board of Health sent a Notice of Violation to Samuel Bass for failing to comply with the Board Orders, BOH/EH 2016-3, specifically noting the following violations:
 - a) OAC 3745-27-60(C) for failing to provide mosquito control records;
 - b) OAC Rule 3745-27-60(B)(7)(c) for failing to establish fire lanes;

- c) Failure to comply with the Board of Health Order, including failure to provide removal and disposal receipts from a registered scrap tire transporter or scrap tire storage facility, monocell, monofill, or recovery facility.
17. On September 8, 2016, Ohio EPA's Northwest District Office, Division of Materials and Waste Management ("NWDO-DMWM"), accompanied by the Board of Health, inspected the property to determine compliance with the scrap tire provisions of ORC Chapter 3734 and OAC Chapter 3745-27. At the time of inspection, Ohio EPA observed approximately 5,458 passenger tire equivalents ("PTEs") open dumped at the Property, and approximately 2,400 scrap tires in semi-trailers. Ohio EPA observed the following violations of Ohio's solid waste laws and rules:
- a) OAC Rule 3745-27-61(A)(2)(a)(i), for having more than one thousand scrap tires on the Property in an unsecured, uncovered, outdoor location;
 - b) OAC Rule 3745-27-60(B)(7)(c), for storing a pile of three hundred fifteen scrap tires within twenty-five feet of the rear of the building; and
 - c) OAC Rule 3745-27-60(C)(2), for failing to 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.

On September 26, 2016, Ohio EPA documented these violations in a notice of violation ("NOV") letter to Respondent. Ohio EPA noted in that letter that mosquito larvae and standing water were observed in numerous scrap tires throughout the Property, and Respondent was not able to provide paperwork to document the application of pesticide or larvicide in accordance with OAC Rule 3745-27-60(C)(2).

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, and Dengue Fever.
19. As of the effective date of these Orders, there are approximately 7,858 passenger tire equivalents ("PTEs") disposed or stored on the ground, or within semi-trailers, located on the property in violation of ORC Section 3734.03, OAC Rule 3745-27-60 and OAC Rule 3745-27-61.
20. Given that scrap tires constitute a breeding ground for mosquitoes, and given the potential that a scrap tire fire could occur, and given the proximity of the scrap tire pile to sensitive sub-populations such as 4 nursing homes and 12 schools, 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.

21. 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.”
22. ORC Section 3734.85 provides: “Upon the written request of the recipient of an order issued under this division, the director may extend the time for compliance with the order if the request demonstrates that the recipient has acted in good faith to comply with the order. If the recipient of an order issued under this division fails to comply with the order ... if the time for compliance with the order ... 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.” Respondent has requested an extended time for compliance with these Orders, in accordance with ORC Section 3734.85, as set forth in these Orders.

V. ORDERS

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

1. Upon the effective date of these Orders, Respondent shall cease open dumping of scrap tires on the Property.
2. Upon the effective date of these Orders, Respondent shall maintain mosquito control in accordance with the provisions of OAC Rule 3745-27-60(C)(2) by keeping all scrap 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.
3. Upon the effective date of these Orders, Respondent shall maintain mosquito control records at the Property 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. Respondent shall make the mosquito control records available for inspection by Ohio EPA during normal operating hours and retain copies of the records for a minimum period of three years pursuant to OAC Rule 3745-27-60(C)(3).

4. Not later than eighteen (18) months after the effective date of these Orders, Respondent shall remove or cause the removal of all existing scrap tires from the Property, including, but not limited to, scrap tires dumped onto the ground, buried or partially buried, and scrap tires stored in trailers, and Respondent shall transport them or cause them to be transported, 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. During the eighteen (18) month period, Respondent shall remove, transport, and dispose of at least 500 scrap tires within 30 days of the effective date of these Orders, and Respondent shall remove, transport, and dispose of at least 500 scrap tires every 30 days thereafter, with all scrap tires, which were located on the Property on the effective date of these Orders, being removed, transported and disposed within eighteen (18) months after the effective date of these Orders.
5. Not later than ten (10) days after removal of scrap tires in accordance with Order Number 4, Respondent shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume or number of scrap tires received. Respondent shall forward such documentation to Ohio EPA's NWDO-DMWM office, at the address found in these Orders under Section IX., Notice, on a monthly basis by the 10th day of each month, until all scrap tires have been removed.
6. Upon the effective date of these Orders, and until such time that all scrap tires which are located on the Property on the effective date of the Orders, have been removed in accordance with Order Number 4, Respondent shall store scrap tires generated in the normal course of Respondent's retail business after the effective date of these Orders in a segregated area from the scrap tires located on the property on the effective date of these Orders, and in accordance with the following provisions:
 - a. If Respondent stores 100 or fewer scrap tires generated after the effective date of these Orders in the normal course of Respondent's retail business, Respondent shall store such scrap tires in a segregated area, and in a manner which does not cause a nuisance, a hazard to public health or safety, or a fire hazard, and shall comply with the standards set forth in OAC Rule 3745-27-60(B)(1) – (B)(11).
 - b. If Respondent stores more than 100 scrap tires, but fewer than 1000 scrap tires generated after the effective date of these Orders in the normal course of Respondent's retail business, Respondent shall store such scrap tires in a secured and covered area, until such time that Respondent has removed all scrap tires located on the property on the effective date of these Orders.

- c. Notwithstanding the above, Respondent shall manage all scrap tires at the Property in compliance with OAC Rules 3745-27-61 and 3745-27-60, until and after such time that Respondent has removed all scrap tires located on the property on the effective date of these Orders in accordance with Order Number 4.
7. By entry into these Orders, Respondent agrees to grant access to the property owned by Respondent, identified by the Richland County Auditor's Office as parcel number 0250904915000, to Ohio EPA, its authorized representatives or contractors for such actions as are necessary or appropriate for the purpose of removing and disposing of scrap tires located on the Property, and spraying for mosquitoes in the event that Respondent fails to comply with these Orders. Respondent hereby agrees to relinquish any claim of ownership interest in any tires that are removed by Ohio EPA, its authorized representatives or contractors from the Property.
8. By entry into these Orders, Respondent hereby agrees to grant access to Ohio EPA, its authorized representatives or contractors to improve existing, or build necessary roads on, over, and across the Property for the purpose of removal of scrap tires disposed at the Property. At the conclusion of any cleanup of any scrap tires from the Property by Ohio EPA, its authorized representatives or contractors, Respondent agrees that all improvements shall attach to the Property.
9. Respondent hereby agrees to hold the Director, Ohio EPA, its employees, its authorized representatives and contractors harmless for actions taken in accordance with access provided under Orders 7 and 8, and for any action not taken by Ohio EPA, its authorized representatives or contractors at the Property.

VI. TERMINATION

Respondent's 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 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 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 from Respondent: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted to Ohio EPA by Respondent seeking termination in accordance with this section 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. 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 Respondent pursuant 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

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

XI. RESERVATION OF RIGHTS

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

XII. WAIVER

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

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



Samuel Bass

4 18 2017
Date