



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

May 1, 2017

James G. Schafer II
Dba Jim's Tires 2 U
38551 SR 39
Salineville, Ohio 43945

**Re: Jim's Tires 2 U
Director's Final Findings and Orders (DFFO)
DFFO
Scrap Tires
Columbiana County
ST020377**

Subject: James G. Schafer II dba Jim's Tires 2 U DFF&O's

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Jim's Tires 2 U.

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

Sincerely,

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

Enclosure

cc: Carl Mussenden, DMWM, CO
Kelly Jeter, DMWM, CO
Lynn Sowers, DMWM, NEDO
Column McKenna, DMWM, NEDO
Terri Finrock, CO, Legal
Robin Nichols, CO, Legal

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

James G. Schafer II	:	<u>Director's Final Findings</u>
dba Jim's Tires 2 U	:	<u>and Orders</u>
38551 SR 39	:	
Salineville, Ohio 43945	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to James G. Schafer dba Jim's Tires 2 U ("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 makes the following findings:

1. Respondent is the owner of approximately 1.3 acres of land identified by the Columbiana County Auditor's Office as parcel number 82-00606.000. The parcel is located at 42424 SR 39 in Wellsville, Yellow Creek Township, Columbiana County, Ohio ("the Property").
2. Respondent operates a business ("Jim's Tires 2 U") at the Property, which offers the retail sale of new and used tires to the public.

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 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 allows establishments selling tires at retail to accumulate no more than 1,000 scrap tires stored in an unsecured, uncovered, outdoor location. That exception only applies, however, when there is a single scrap tire storage area, and that area is no larger than 2,500 square feet.
11. OAC Rule 3745-27-61(B) requires that before establishing or modifying a scrap tire recovery facility a registration certificate be applied for and approved by the

Director. OAC Rule 3745-27-61(A)(2), however, provides that the requirement to obtain a scrap tire recovery facility registration certificate does not apply to the owner or operator of a premises where tires are sold at retail if (i) no more than one thousand scrap tires are present any time in an unsecured, uncovered, outdoor location or (ii) scrap tires are secured in a building or a covered, enclosed container, trailer, or installation.

12. Currently, approximately 5,300 scrap tires are open dumped on the ground outside at the Property, where tires are sold at retail. This is a violation of OAC Rule 3745-27-61, as the scrap tires are not placed in a single area smaller than 2,500 square feet, the Property is not registered as a scrap tire recovery facility, and the premises does not meet the exception set forth in OAC Rule 3745-27-61(A)(2).
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. 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.
15. In response to a complaint, on May 14, 2014, Ohio EPA's Northeast District Office, Division of Materials and Waste Management ("NEDO-DMWM") 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 an estimated 2,000 scrap tires open dumped at the Property, the presence of mosquito larvae in the tires, and the following violations of Ohio's solid waste laws and rules:
 - a) ORC Section 3734.03 and OAC Rule 3745-27-05(C), for open dumping scrap tires;
 - b) OAC Rule 3745-27-60(C)(1), for storing scrap tires and failing to take appropriate steps to control mosquitoes;
 - 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;
 - d) OAC Rule 3745-27-60(C)(3), for failing to maintain mosquito control records at the Property; and

- e) OAC Rule 3745-27-60(D)(2), for failing to timely apply an appropriate larvicide after written notice from Ohio EPA regarding the discovery of mosquito larvae during an inspection.

On June 2, 2014, Ohio EPA documented these violations in a notice of violation ("NOV") letter to Respondent.

16. On December 21, 2015, Ohio EPA's NEDO-DMWM re-inspected the Property and discovered a scrap tire chipper on the Property and scrap tire chips on the ground, although Respondent was neither registered nor permitted as a scrap tire recovery facility. The following violations of Ohio solid waste laws and rules were noted during the re-inspection:

- a) ORC Section 3734.03 and OAC Rule 3745-27-05(C), for open dumping an estimated 4,000 scrap tires;
- b) OAC Rule 3745-27-61(B), for failing to submit an application for a registration certificate as required by ORC Sections 3734.75, 3734.76, or 3734.78 and receive approval by the director before beginning operation of a class II scrap tire recovery facility;
- c) OAC Rule 3745-27-57(A)(5), for failing to provide scrap tire shipping papers and disposal receipts upon request by Ohio EPA;
- d) OAC Rule 3745-27-60(C)(1), for storing scrap tires and failing to take appropriate steps to control mosquitoes;
- e) 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; and
- f) OAC Rule 3745-27-60(C)(3), for failing to maintain mosquito control records at the Property.

On January 21, 2016, Ohio EPA documented these violations in an NOV letter to Respondent.

17. On January 19, 2016 and February 24, 2016, Ohio EPA's NWDO-DMWM inspected the Property and observed the previously mentioned violations of Ohio's solid waste laws and rules and these additional violations:

- a) OAC Rule 3745-27-57(C), for failing to complete shipping papers when one of the following occurs: (1) a registered scrap tire transporter picks up scrap tires from any source; (2) scrap tires are delivered to the licensed facility or when tires are removed from the facility; and (3) a scrap tire

facility, not required to be registered or permitted in accordance with OAC Rule 3745-27-61 or 3745-27-63, ships or receives any scrap tires; and

- b) OAC Rule 3745-27-54(B), for failing to submit an application for an annual registration certificate and have it approved by the director prior to transportation of scrap tires.

Ohio EPA documented violations observed at these inspections in NOV letters sent to Respondent.

- 18. On March 28, 2016, Ohio EPA's NEDO-DMWM re-inspected the Property to assess compliance with Ohio solid waste laws and rules. The inspector observed the abatement of several violations, with the exception of the continued open dumping of scrap tires, as follows:

- a) Respondent stated that arrangements had been made with a registered scrap tire transporter to remove and dispose of two loads of scrap tires per month, and that he would only utilize his flatbed truck to transport used tires;
- b) Respondent provided shipping papers to document scrap tire disposal on January 8, 2016, February 5, 2016, March 1, 2016, and March 23, 2016;
- c) Respondent arranged for the application of a pesticide or larvicide, registered for use as mosquito control by the Ohio department of agriculture, to be applied by AID Pest Control of Salem;
- d) Respondent arranged for AID Pest Control of Salem to make continuing applications of a pesticide or larvicide to all scrap tires stored outdoors at no greater than thirty-day intervals; and
- e) Respondent began maintaining mosquito control records at the premises.
- f) However, in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C), Respondent's open dumping of an estimated 3,000 scrap tires continues;

On April 18, 2016, Ohio EPA documented the abatement of several violations and the continued open dumping of scrap tires in an NOV letter to Respondent.

- 19. Between April 26, 2016 and November 17, 2016, Ohio EPA's NEDO-DMWM re-inspected the Property to assess compliance with Ohio solid waste laws and rules. Ohio EPA observed continuing violations of ORC Section 3734.03 and OAC Rule 3745-27-05(C) resulting from the open dumping of approximately 5,300 scrap tires. Ohio EPA documented the continued open dumping violations in six (6) NOV letters to Respondent.

20. Ohio EPA has received scrap tire shipping papers documenting the removal and delivery to an appropriate disposal facility for loads of scrap tires dated December 16, 2015, December 19, 2015, January 23, 2016, March 1, 2016, March 23, 2016, and April 26, 2016.
21. To date, Respondent remains in violation of Ohio's solid waste laws and rules for failing to properly remove and dispose of scrap tires from the Property.
22. Given the potential for a tire fire that could cause adverse health effects, 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.
23. 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."
24. In accordance with ORC Section 3734.85, a person who receives an order under ORC Section 3734.85 may request an extension of the time for compliance with the order. To request an extension, the recipient of the order must submit a written request demonstrating that the recipient has acted in good faith to comply with the order.
25. If the recipient of an order issued under ORC Section 3734.85(A) 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 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.

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 and shall not operate a class II recovery facility or transport scrap tires without first receiving appropriate authorization from the Director, in compliance with ORC Chapter 3734 and OAC Chapter 3745-27.
2. Upon the effective date of these Orders, Respondent shall ensure that applications of pesticide/larvacide continue in accordance with OAC Rule 3745-27-60(C)(2).
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 one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of scrap tires stored in an unsecured, uncovered, and outside location on the Property 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. Not later than thirty (30) days after the effective date of these Orders, Respondent shall remove, transport, and dispose of at least 1,075 scrap tires.
 - b. Not later than sixty (60) days after the effective date of these Orders, Respondent shall remove, transport, and dispose of at least 1,075 scrap tires in addition to those disposed pursuant to Order 4.a.
 - c. Not later than ninety (90) days after the effective date of these Orders, Respondent shall remove, transport, and dispose of at least 1,075 scrap tires in addition to those disposed pursuant to Orders 4.a. and 4.b.
 - d. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove, transport, and dispose of all scrap tires remaining outside, unsecured, and uncovered in excess of any

quantity of scrap tires that are managed in accordance with OAC 3745-27-60 and for which outdoor storage is authorized by and conducted in accordance with OAC Rule 3745-27-61.

5. Respondent may make a written request to extend the time for compliance in accordance with ORC Section 3734.85(A). In order for an extension of the time for compliance to be granted, the request must demonstrate Respondent has acted in good faith to comply with these Orders and be sent to:

Ohio EPA
Chief, Division of Materials and Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049

6. Respondent shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume or number of scrap tires received as part of the scrap tire removal pursuant to Order 4, above. Respondent shall forward such documentation to Ohio EPA's NEDO-DMWM office, at the address found in these Orders under Section X., Notice, within fourteen days after each round of tire removal according to Order 4, above.
7. By entry into these Orders, Respondent agrees to grant access to Ohio EPA, its representatives and contractors for the purpose of removing and disposing of all excess scrap tires in an unsecured, uncovered, and outdoor location from the Property and spraying for mosquitoes in the event that Respondent fails to comply with these Orders. 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 representatives.
8. Respondent hereby agrees to relinquish any claim of ownership interest in any scrap tires that are removed from the Property.
9. Respondent hereby grants 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 disposed outside at the Property. At the conclusion of the cleanup of the outdoor scrap tires from the Property, all improvements shall become the property of Respondent.
10. Respondent hereby agrees to hold the Director, his representatives and contractors harmless for all activities associated with removal and disposal of scrap tires from the Property if Respondent fails to comply with these Orders.

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 under 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

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

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. 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

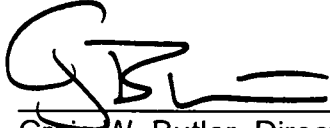
The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

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:

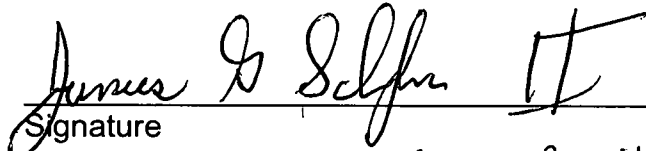
Environmental Protection Agency



Craig W. Butler, Director

AGREED:

James G. Schafer II


Signature

March 24 17
Date

James G Schafer II
Printed or Typed Name

Owner
Title