



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

May 17 2017

Jacquelyn Sue Leupp
12548 County Road 16
Pioneer, Ohio 43554

Re: **Jacquelyn Sue Leupp**
Director's Final Findings and Orders (DFFO)
DFFO
Scrap Tires
Williams County
ST021364

Subject: Jacquelyn Sue Leupp DFF&O's

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Jacquelyn Sue Leupp.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Dearth". The signature is written in a cursive, flowing style.

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

Enclosure

ec: Carl Mussenden, DMWM, CO
Kelly Jeter, DMWM, CO
Mike Reiser, DMWM, NWDO
Kristin Tillison, DMWM, NWDO
Terri Finrock, CO, Legal
Troy Harter, CO, Legal

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of

Jacquelyn Sue Leupp	:	<u>Director's Final Findings</u>
12548 County Road 16	:	<u>and Orders</u>
Pioneer, Ohio 43554	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

Ohio EPA MAY 17 '17
Entered Directors Journal

These Director's Final Findings and Orders ("Orders") are issued to Jacquelyn Sue Leupp ("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 her 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 the property identified as Parcel Number 083-330-00-004.000 ("the Property") located on County Road M in Williams County.
2. 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).
3. Respondent is an "owner" as that term is defined in OAC Section 3745-27-01(O)(7).

4. There are an estimated one thousand nine hundred (1,900) scrap tires disposed on the Property. These tires are placed in multiple piles outside on the Property.
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. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).
7. The Property where the scrap tires are disposed is not validly 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, or a solid waste disposal facility, nor has any application been submitted.
8. ORC Section 3734.01(I) defines "Open dumping" as follows: "The depositing of solid wastes into a body or stream of water or onto the surface of the ground at a site that is not licensed as a solid waste facility under section 3734.05 of the Revised Code or, if the solid wastes consist of scrap tires, as a scrap tire collection, storage, monocell, monofill, or recovery facility under section 3734.81 of the Revised Code; 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"
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. The open dumping of solid waste and scrap tires are violations 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."
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).

12. OAC Rule 3745-27-60(B)(1) states "[s]ufficient drainage shall be maintained such that water does not collect in the area where scrap tires are stored."
13. 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.
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. OAC Rule 3745-27-60(C) states, "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.

(3) 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. The property owner or the owner or operator of the premises shall make the mosquito control records available for inspection by the director or the health commissioner during normal operating hours. The owner or operator shall retain copies of mosquito control records for a minimum period of three years."

16. OAC Rule 3745-27-61(B) states in pertinent part, "An application for a registration certificate as required by section 3734.75, 3734.76, or 3734.78 of the Revised Code, shall be submitted to and approved by the director, before the establishment or modification of the scrap tire collection, class II scrap tire storage, or class II scrap tire recovery facility is begun."
17. ORC Section 3734.76(C) states in pertinent part, "On and after the effective date of the rules adopted under section 3734.71 of the Revised Code, no person shall establish a new, or modify an existing, scrap tire storage facility without first either registering with the director by submitting an application for a scrap tire storage facility registration certificate with accompanying information regarding the facility and its method of operation or submitting to the director an application for a scrap tire storage facility permit with accompanying engineering detail plans, specifications, and information regarding the facility and its method of operation, as determined by the applicant in accordance with rules adopted under section 3734.71 of the Revised Code, for approval under those rules and receiving a registration certificate or a permit issued by the director under this division.
18. Ohio EPA conducted inspections of the Property on January 6, 2016, August 3, 2016, and November 16, 2016 and documented the following violations in letters dated January 25, 2016, August 12, 2016, and November 28, 2016: ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid wastes.
19. 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 1,900 scrap tires open dumped on the Property that provide a breeding ground for mosquitoes as the tires have not been treated with applications of pesticide or larvicide;
 - b. the potential for a tire fire when the tires are stored in an overgrown area;
 - c. the proximity of the tire piles to the house trailer and to each other.
20. 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.”
21. ORC Section 3734.85(A) provides in relevant part: “If the person responsible for causing the accumulation of scrap tires is a person different from the owner of the land on which the accumulation is located, the director may issue such an order to the landowner.”
22. ORC Section 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.”
23. ORC Section 3734.85(A) 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. The director shall keep an itemized record of those costs. Upon completion of the actions for which the costs were incurred, the director shall record the costs at the office of the county recorder of the county in which the accumulation of scrap tires was located. The costs so recorded constitute a lien on the property on which the accumulation of scrap tires was located until discharged."

V. ORDERS

Respondent 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, Respondent shall implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(C). Mosquito control measures shall include, but are not limited to, the following:
 - a. Respondent shall store scrap tires such that the tires are kept free of water at all times.
 - b. Respondent shall survey the scrap tires for the presence of adult mosquitoes and/or larvae. If adult or larval mosquitoes are detected, Respondent shall apply pesticide and/or larvicide registered for use for mosquito control by the Ohio Department of Agriculture. When necessary, Respondent shall apply pesticide and/or larvicide to all scrap tires stored outdoors at no greater than thirty-day intervals or as recommended by the manufacturer or formulator.
 - c. Respondent shall continue mosquito surveys and, when necessary, applications of pesticide/larvicide until all tires have been removed from the Property.
 - d. If pesticide/larvicide is applied, Respondent shall maintain mosquito control records indicating the name, type, amount or pesticide or larvicide 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 provide copies of the mosquito control records to Ohio EPA Northwest District Office within ten (10) days after each application of the registered pesticide or larvicide.
2. Not later than ninety (90) days after the effective date of these Orders and every ninety (90) days thereafter, Respondent shall have removed and lawfully disposed of a minimum of three (3) tons of scrap tires or 300 scrap tires from the 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, monofill, monocell, or recovery facility licensed under ORC

Section 3734.81, to such a facility in another state operating in compliance with the laws of that 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.

3. Not later than one year after the effective date of these Orders, Respondent shall have removed and lawfully disposed of all scrap tires from the 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, monofill, monocell, or recovery facility licensed under ORC Section 3734.81, to such a facility in another state operating in compliance with the laws of that 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.
4. Not later than ten (10) days after removal of the scrap tires, in accordance with each of the deadlines identified in Orders No. 2 and 3 above, Respondent shall obtain and forward to Ohio EPA Northwest District Office receipt(s) from the registered transporter and the disposal facility, indicating weight, volume and number of scrap tires transported and received.
5. If Respondent fails to meet the deadlines identified in Orders No. 2 and 3 above, Respondent shall, not later than forty-five (45) days after Ohio EPA's written notification of Respondent's noncompliance, remove and lawfully dispose of all scrap tires from the 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, monofill, monocell, or recovery facility licensed under ORC Section 3734.81, to such a facility in another state operating in compliance with the laws of that 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.
6. 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 scrap tires from the Property and spraying for mosquitoes in the event that Respondent fail to comply with the drawdown schedule presented in Orders 2 and 3. Respondent agrees to grant to Ohio EPA, its contractors, employees, agents, representatives, or assigns, the right to full access over, under, across and through the Property, and to any reasonable or necessary right-of-way access on abutting parcels of land owned by Respondent, for all purposes that Ohio EPA may deem reasonable, necessary, or appropriate to address the conditions related to the open dumping of solid waste, and for all purposes necessary or appropriate, at Ohio EPA's discretion, to remove and properly manage the scrap tires located on the Property, including to remove, transport, and dispose or process any tires and scrap tires located on the Property, to remove, transport, and dispose of solid waste located on the Property, and to remediate conditions on the Property. At the conclusion of the cleanup of all scrap tires from the Property, all improvements shall become the property of the Respondent.

7. Respondent hereby agrees to relinquish any claim of ownership interest in any scrap tires that are removed from the Property.
8. Respondent agrees, that by entering into this Consent Order, or taking any action under this Consent Order, Ohio EPA assumes no liability for any injuries or damages to persons or property resulting from actions taken, or not taken, by Ohio EPA, its contractors, employees, agents, representatives, or assigns.
9. Respondent agrees that upon completion of the actions for which costs were 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, the director may record the costs at the office of the county recorder of the county in which the accumulation of scrap tires was located, and that the costs so recorded shall constitute a lien on the Property until discharged. Respondent agrees not to dispute the validity of such a lien.

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 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 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: "I certify that the information contained in or accompanying this certification is true, accurate and complete." This certification shall be submitted by Respondent 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 Property.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken by Respondent 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 N. Dunbridge Road
Bowling Green, Ohio 43402
Attn: Unit Supervisor, DMWM

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 rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders. Ohio EPA specifically reserves all rights in law or equity to recover any public funds expended or to be expended to address conditions arising from or related to the Property by placing a lien on the Property in accordance with ORC Sections 3734.85. Ohio EPA and Respondent each reserve all rights, privileges, claims, causes of action, remedies, rights of recovery in law or equity against any person responsible for the accumulation of scrap tires on the Property, who is not a party to this Consent Order.

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, Respondent 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 Respondent's 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. Respondent specifically waives the right to dispute the validity or enforceability of any lien filed in accordance with this Order or the provisions of ORC 3734.85 for which costs are, were or will be incurred

by the director for conducting the removal operation. Respondent specifically waives Respondent's rights to dispute any action that Ohio EPA may take in law or equity to recover any public funds expended or to be expended to address conditions arising from or related to the Property in accordance with ORC 3734.85.

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. COVENANT NOT TO SUE

Respondent agrees to hold harmless and covenants not-to-sue, the State including Ohio EPA, its contractors, employees, agents, representatives, for any and all actions taken at the Property, and for any and all actions not taken by the State including Ohio EPA, its contractors, employees, agents, representatives, and assigns at the Property, to address the conditions related to the open dumping of solid wastes, including scrap tires on the Property.

Respondent covenants not-to-sue and agrees not to assert any claim, demand, or cause of action against Ohio EPA, its contractors, employees, agents, representatives, or assigns, with respect to liability based upon ownership of any tires, solid waste, or scrap tires upon the Property, the Property or natural resources thereon for loss, damage, diminution in value to property, mineral rights whether merged with the Property or severed, or natural resources upon the Property.

Ohio EPA maintains, and Respondent agrees, that Ohio EPA, by issuance of these Orders, assumes no liability for any injuries or damages to persons or property resulting from actions taken, or not taken, by Ohio EPA, its contractors, employees, agents, representatives, or assigns.

XIV. EFFECTIVE DATE

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

XV. 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.

IT IS SO ORDERED AND AGREED:

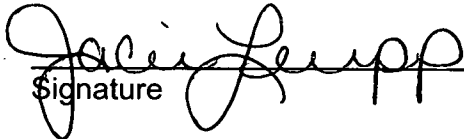
Ohio Environmental Protection Agency



Craig W. Butler, Director

IT IS SO AGREED:

Jacquelyn Sue Leupp



Signature

5-2-17

Date

Jackie Leupp

Printed or Typed Name