



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

November 29, 2017

Michael Hoagland
4746 State Route 718
Troy, Ohio 45373

**Re: Hoagland Property
Director's Final Findings and Orders (DFFO)
DFFO
Municipal Solid Waste Landfills
Miami County
MSWL021601**

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 Hoagland Property.

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
30 East Broad Street, 4th Floor
Columbus, Ohio 43215

If you have any questions, please contact Robin Nichols 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: Teri Finfrock, Legal
Robin Nichols, Legal
Kelly Jeter, DMWM, CO
Tracy Buchanan, DMWM, SWDO
Dylan Dyer, DMWM, SWDO

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

Ohio EPA NOV 29 '17
Entered Directors Journal

In the Matter Of

| | | |
|----------------------|---|----------------------------------|
| Michael Hoagland | : | <u>Director's Final Findings</u> |
| 4746 State Route 718 | : | <u>and Orders</u> |
| Troy, Ohio 45373 | : | |

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Michael Hoagland ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3714.12, 3734.13, and 3734.85.

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 Chapters 3714. and 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 D08-097420 located at 651 Union Street, Troy, Ohio, Miami County ("the Property").
2. Respondent is a "person" as that term is defined in ORC §§ 3714.01(H), 3734.01(G), and in Ohio Administrative Code ("OAC") Rules 3745-27-01(P)(3) and 3745-400-01(P)(1).
3. Respondent is an "owner" as that term is defined in OAC Rules 3745-27-01(O)(7) and 3745-400-02(O)(7).

4. There are an estimated three hundred (300) scrap tires disposed 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 § 3734.01(E) and OAC Rule 3745-27-01(S)(23).
7. The Property where the scrap tires are disposed 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, or a solid waste disposal facility, nor has any application been submitted.
8. OAC Rule 3745-37-01(A) states that "[n]o person shall conduct municipal solid waste landfill, industrial solid waste landfill, residual solid waste landfill, compost facility, transfer facility, infectious waste treatment facility, or solid waste incineration facility operations without possessing a separate, valid license for each such operation, as required by Chapter 3734. of the Revised Code and the Administrative Code rules adopted thereunder. Each license shall be obtained from the board of health in the health district in which the facility is located, or by the director, if the director has assumed the licensing function for that health district."
9. ORC § 3734.01(I) defines open dumping as 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 [.]"
10. 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."
11. 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.”

12. 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[.]”
13. 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[.]”
14. ORC § 3714.06(A) states, in pertinent part, “[n]o person shall operate or maintain a construction and demolition debris facility or processing facility without an annual construction and demolition debris facility or processing facility operation license[.]”
15. OAC Rule 3745-400-01(C)(3) 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.”
16. OAC Rule 3745-400-04(B) states, in pertinent part, “[n]o person shall conduct or allow illegal disposal of construction and demolition debris.”
17. 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).
18. 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.”
19. OAC Rule 3745-27-60(B)(7) states that “[t]he 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.
20. 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.
21. OAC Rule 3745-27-60(C) provides that "[a]nyone 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."

22. 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."
23. Ohio EPA conducted inspections of the Property on May 2, 2016, July 11, 2016, August 23, 2016, September 27, 2016, November 15, 2016, and March 1, 2017, and documented the following violations in letters dated May 11, 2016, July 15, 2016, August 30, 2016, October 19, 2016, December 2, 2016, and March 29, 2017:
 - ORC § 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid wastes;
 - OAC Rule 3745-37-01(A) for conducting solid waste landfill operations without possessing a separate valid license;
 - OAC Rule 3745-27-60(B)(7)(E) and 3745-27-60(B)(11) for not maintaining sufficient fire breaks between scrap tire piles and areas, and for fire breaks not being maintained free of all combustible material;
 - OAC Rule 3745-400-04(B) for conducting or allowing illegal disposal of construction and demolition debris; and
 - OAC Rule 3745-37-01(C) for establishing, modifying, operating or maintaining a construction and demolition debris facility without a construction and demolition debris facility license.
24. 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 300 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.
25. ORC § 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."

26. ORC § 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."
27. ORC § 3734.85(A) also provides in relevant part: "If the recipient of an order issued under this division fails to comply with the order within one hundred twenty days after the issuance of the order or, if the time for compliance with the order was so extended, within that time, the director shall take such actions as the director considers reasonable and necessary to remove and properly manage the scrap tires located on the land named in the order. The director, through employees of the environmental protection agency or a contractor, may enter upon the land on which the accumulation of scrap tires is located and remove and transport them to a scrap tire recovery facility for processing, to a scrap tire storage facility for storage, or to a scrap tire monocell or monofill facility for storage or disposal. The director shall enter into contracts for the storage, disposal, or processing of scrap tires removed through removal operations conducted under this section."
28. ORC § 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 Chapters 3714 and 3734 and the rules promulgated thereunder according to the following compliance schedule:

1. Upon the effective date of these Orders, Respondent shall cease acceptance and disposal of all solid wastes, including scrap tires, and construction and demolition debris at the Property and shall comply with ORC Chapters 3714 and 3734 and OAC Chapters 3745-27 and 3745-400.

Scrap Tires

2. Not later than ten (10) 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), until all scrap tires have been removed from the Property. Respondent 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, Respondent shall remove or cause the removal 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, monocell, monofill, or recovery facility licensed under ORC § 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.
4. Respondent shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume, and number of scrap tires received. Respondent 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 scrap tires have been removed from the Property, lawfully transported, and disposed have been provided to Ohio EPA.

Other Solid Wastes

5. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of all solid waste, excluding scrap tires, from the Property and dispose of all solid waste, excluding scrap tires, at a licensed solid waste disposal facility. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of the solid waste disposed. Respondent 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.

Construction and Demolition Debris

6. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of all C&DD from the Property and dispose of all C&DD at a licensed C&DD facility or at a licensed solid waste disposal facility. If any C&DD at the Property is commingled with solid waste and cannot be segregated, then all such unsegregated material shall be disposed of at a licensed solid waste disposal facility. Respondent 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. Respondent 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.

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 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 Respondent or the Property.

VIII. NOTICE

All documents required to be submitted by Respondent 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.

IX. 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 Respondent 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 Respondent 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 Respondent 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 Respondent.

Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

X. 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