



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

March 21, 2014

Ms. Helen Murphy
14509 Eaton Pike
New Lebanon, Ohio 45345

Re: Ms. Helen Murphy
Director's Final Findings & Orders
DFF&O
Scrap Tire
Montgomery County
ST020030

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

You are hereby notified that this action of the 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 if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, OH 43215

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Dearth".

Brian Dearth
Processing and Records Management Unit
Division of Materials and Waste Management

ec: Matt Boyer, DMWM, CO Jill Olberding, DMWM, SWDO
Janine Maney, Legal, CO
cc: Michael Kautz, Dayton Montgomery County Health Department

OHIO E.P.A.
MAR 21 2014

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

ENTERED DIRECTOR'S JOURNAL

In the Matter Of

Ms. Helen Murphy : Director's Final Findings
14509 Eaton Pike : and Orders
New Lebanon, Ohio 45345 :

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Helen Murphy ("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 and 3734.85.

II. PARTIES

These Orders shall apply to and be binding upon Respondent and 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 current owner of a parcel of land, located at 14509 Eaton Pike, New Lebanon, Ohio, 45345 identified by the Montgomery County Auditor as Parcel Identification Number L53 16510 0049 and Parcel Identification Number L53 16510 0050 (the "Property").
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. Helen Forman ("previous owner") transferred the property by Quit Claim Deed to Respondent on July 25, 2012.
4. There are currently an estimated 80,000 scrap tires illegally disposed on the Property.

5. The Property is not licensed as a scrap tire collection facility, a solid waste disposal facility, or any type of legitimate recycling facility.
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. 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."
8. The open dumping of scrap tires is a violation of ORC § 3734.03 which states that "[n]o person shall dispose of solid wastes by open burning or open dumping," and OAC Rule 3745-27-05(C) which states that "[n]o person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734, of the Revised Code, and shall submit verification that the solid waste has been properly managed."
9. OAC Rule 3745-27-01(O)(4)(b) defines open dumping as, "[t]he deposition of solid wastes that consist of scrap tires into waters of the state, and also means the final deposition of scrap tires on or into the ground at any place other than a scrap tire collection, storage, monofill, monocell, or recovery facility licensed under section 3734.81 of the Revised Code, or at a site or in a manner not specifically identified in division (C)(2), (C)(3), (C)(4), (C)(5), (C)(7), or (C)(10) of section 3734.85 of the Revised Code, or at any licensed solid waste facility if the deposition is not in accordance with Chapters 3745-27 and 3745-37 of the Administrative Code."
10. 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).
11. 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.
12. On September 9, 2010, the Montgomery County Health Department ("Health Department") conducted an inspection of the Property, and observed open dumping of scrap tires and solid waste on the Property. Violations of open dumping were documented in an Official Notice and Order from the Health Department to the previous owner dated September 20, 2010.

13. On October 14, 2010, following up on a scrap tire fire of less than 10,000 scrap tires which occurred on the Property on October 10, 2010, the Montgomery County Health Department conducted an inspection of the Property. On October 27, 2010, Ohio EPA and the Health Department conducted a joint inspection of the Property. Violations were documented in the Second Official Notice and Order from the Health Department dated December 7, 2010. The Health Department also placed the previous property owner on a schedule to attain compliance with the clean-up Order by April 30, 2011.
14. On September 18, 2012 Ohio EPA and the Health Department conducted a joint inspection of the Property and observed solid waste, thousands of scrap tires on the ground, and burnt scrap tires from an October 10, 2010 tire fire. The inspectors observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05 for open dumping of solid wastes, including scrap tires;
 - b. ORC Sections 3734.02(C) and 3745.05(A) for establishing and operating a solid waste facility without a permit or license;
 - c. OAC Rule 3745-27-60(B) and (C) for illegal storage of scrap tires;
 - d. OAC 3745-27-60(B)(7) and (B)(11) for not maintaining adequate fire breaks.

These violations were documented in a Notice of Violation letter ("NOV") from the Health Department dated October 18, 2012.

15. On January 30, 2013, the Health Department issued Board Orders by Resolution Number 13-026 declaring the property located at 14509 Eaton Pike, Perry Township, Montgomery County, to be a public health nuisance, and ordered the abatement of the nuisance by March 11, 2013.
16. On April 11, 2013, Ohio EPA and the Health Department conducted a joint inspection of the Property. The inspectors observed multiple piles of scrap tires and scattered scrap tires across the property, estimating approximately 80,000 scrap tires of various sizes, as well as the burnt remains of scrap tires, and various burn areas across the property. The inspectors observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05 for open dumping and open burning of solid wastes;
 - b. OAC Rule 3745-27-60(C)(1)(b) for failure to keep scrap tires free of water;
 - c. OAC Rule 3745-27-60(B)(7)(a) for storing scrap tires in a basal area greater than two thousand five hundred square feet;
 - d. OAC Rule 3745-27-60(B)(7) and (B)(11) for not maintaining adequate fire lanes free of combustible material, including weeds, brush, leaves, and tree debris.

This inspection was documented in an NOV from the Health Department dated April 23, 2013.

17. On May 1, 2013, the Health Department issued Board Orders to Respondent by Resolution Number 13-131 declaring the property located at 14509 Eaton Pike, Perry Township, Montgomery County, to be a public health nuisance, and ordered Respondent to abate the nuisance within 30 days of receipt of the notice.
18. On June 18, 2013, Ohio EPA and the Health Department conducted a joint inspection of the Property. The inspectors observed multiple piles of scrap tires and scattered scrap tires across the property, estimating approximately 80,000 scrap tires, as well as the burnt remains of scrap tires and various burn areas across the property. Ohio EPA observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping and open burning of solid wastes;
 - b. OAC Rule 3745-27-60(C)(1)(b) for failure to keep scrap tires free of water;
 - c. OAC Rule 3745-27-60(B)(7)(a) for storing scrap tires in a basal area greater than two thousand five hundred square feet;
 - d. OAC Rule 3745-27-60(B)(7) and (B)(11) for not maintaining adequate fire lanes free of combustible material, including weeds, brush, leaves, and tree debris.

This inspection was documented in an NOV from the Ohio EPA, SWDO to Respondent dated July 2, 2013.

19. On November 25, 2013, Ohio EPA conducted an inspection of the Property, and observed an estimated 80,000 scrap tires of various sizes, and the burnt remains of scrap tires on the Property. Ohio EPA observed the following violations:
 - a. ORC Section 3734.03 and OAC Rule 3745-27-05 for open dumping and open burning of solid wastes;
 - b. OAC Rule 3745-27-60(C)(1)(b) for failure to keep scrap tires free of water;
 - c. OAC Rule 3745-27-60(B)(7)(a) for storing scrap tires in a basal area greater than two thousand five hundred square feet;
 - d. OAC Rule 3745-27-60(B)(7) and (B)(11) for not maintaining adequate fire lanes free of combustible material, including weeds, brush, leaves, and tree debris.

This inspection was documented in an NOV from Ohio EPA to Respondent dated December 3, 2013.

20. Mosquitoes collected in Montgomery County in 2013 tested positive for West Nile Virus. Given that scrap tires constitute a breeding ground for mosquitoes, and given that a scrap tire fire occurred on the Property and considering the potential that another tire fire could occur, 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, 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. 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 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."

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 implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(C). 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.
2. Upon the effective date of these Orders, Respondent shall cease acceptance and disposal of all solid wastes, including scrap tires, at the Property and shall comply with ORC Chapter 3734. and OAC Chapter 3745-27.
3. Not later than thirty (30) days after the effective date of these Orders, Respondent shall:

- a. establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60;
 - b. characterize and, if necessary, remediate areas of contamination resulting from the fire that occurred at the Property on October 10, 2010. Remediation activities shall be prioritized in accordance with OAC Rules 3745-27-79(C)(1)(b) through (e).
4. Not later than ninety (90) days after the effective date of these Orders in accordance with OAC 3745-27-79(C)(2), Respondent shall remove or cause the removal of all burned and partially burned scrap tires from the Property including, but not limited to, burned and partially burned scrap tires dumped onto the ground and/or buried. Pursuant to OAC Rule 3745-27-79(C)(1)(b), all burned and partially burned scrap tires shall be disposed as a solid waste at a licensed solid waste disposal facility.
 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 remaining scrap tires, other than those removed in accordance with Order No. 4, from the Property including, but not limited to, scrap tires dumped onto the ground and/or buried, and shall arrange for their transportation, by a registered scrap tire transporter:
 - a. to a scrap tire storage, monofill, monocell, or recovery facility licensed under ORC Section 3734.81; or
 - b. to such a facility in another state operating in compliance with the laws of that state in which it is located; or
 - c. to any other solid waste disposal facility in another state that is operating in compliance with the laws of that state.
 6. For burned and/or partially burned scrap tires, Respondent shall obtain disposal receipts from the solid waste disposal facility, indicating weight and/or volume received and forward all such documentation to Ohio EPA-Southwest District Office within ten (10) days after completion of Order No. 4.
 7. For scrap tires removed in accordance with Order No. 5, Respondent shall obtain receipts from the registered transporter and the facility, indicating weight, volume or number of scrap tires received. Respondent shall forward all such documentation and receipts for transportation and disposal to Ohio EPA-Southwest District Office within ten (10) days after completion of Order No. 5.
 8. Respondent shall continue to comply with Order No. One (1) above until such time as all scrap tires have been removed from 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 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, 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. 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 45402-2911
Attn: Unit Supervisor, DMWM

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

X. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against 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 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 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 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.

XI. EFFECTIVE DATE

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

IT IS SO ORDERED:



Craig W. Butler, Director