



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

September 26, 2018

Richard E. Kuhns  
26504 Royalton Rd  
Columbia Station, OH 44023

**Re: Richard E. Kuhns  
Director's Final Findings and Orders (DFFO)  
DFFO  
Scrap Tires  
Lorain County  
ST023093**

Ohio EPA SEP 26 '18  
Entered Directors Journal

**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 Richard E. Kuhns.

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 E. Broad St., 4<sup>th</sup> Floor  
Columbus, Ohio 43215

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

Sincerely,

Gregory Nichols  
Division of Materials & Waste Management

ec: Andrea Smoktonowicz, DMWM, Legal  
Kelly Jeter, DMWM, CO  
Carl Mussenden, DWMW, CO  
Bruce McCoy, DMWM, CO  
Katharina Snyder, DWMW, NEDO

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Richard E. Kuhns	:	<u>Director's Final Findings</u>
26504 Royalton Rd	:	<u>and Orders</u>
Columbia Station, Ohio, 44023	:	

Respondent

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Richard E. Kuhns ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") sections 3714.12, 3734.13, 3734.85, and 6111.03.

**II. PARTIES BOUND**

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 [and in the appendices] shall have the same meaning as defined in ORC Chapters 3734. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of a 5-acre parcel of land identified in the records of the Lorain County Auditor's Office as Parcel Number 1100065000002 and located at 37109 W. Royalton Road, Grafton, Lorain County, Ohio (the "Property").
2. Respondent is a "person" as that term is defined in ORC Sections 3734.01(G), 3714.01, and 6111.01(I), and in Ohio Administrative Code ("OAC") Rules 3745-27-01(P)(3), 3745-400-01(P)(2), 3745-50-10(A), and 3745-38-01(P).
3. There are currently an estimated 40,000 scrap tires and 80 cubic yards of commingled solid waste and construction and demolition debris ("C&DD") open

dumped and illegally disposed on the Property.

4. The Property is neither licensed nor permitted as a scrap tire facility, a solid waste disposal facility, nor a construction and demolition debris disposal facility in accordance with ORC Chapters 3734 and 3714, and OAC Chapters 3745-27 and 3745-400.
5. ORC Section 3734.01(E) defines "solid wastes" as "such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations ... and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris."
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. "Construction and demolition debris" is defined in ORC Section 3714.01 as "those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any physical structure that is built by humans[.]"
8. The open dumping of solid waste 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)(a) defines "open dumping" as "[t]he deposition of solid wastes, other than scrap tires, into waters of the state, and also means the final deposition of solid wastes on or into the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code, and Chapters 3745-27, 3745-293745-30, and 3745-37 of the Administrative Code."
10. OAC Rule 3745-27-01(O)(4)(b) further defines "open dumping" as "[t]he deposition of solid wastes that consist of scrap tires into waters of the state, and also means the 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.”

11. OAC Rule 3745-400-04(B) provides that “[n]o person shall conduct or allow illegal disposal of construction and demolition debris.” OAC Rule 3745-400-01(I)(1) defines “illegal disposal” as “the disposal of construction and demolition debris at any place other than a construction and demolition debris disposal facility operated in accordance with Chapter 3714. of the Revised Code, this chapter, and Chapter 3745-37 of the Administrative Code, ... [or] a solid waste disposal facility operated in accordance with Chapter 3745-27 of the Administrative Code, and licensed in accordance with Chapter 3745-37 of the Administrative Code[.]”
12. OAC Rule 3745-27-60(B) provides that storage of scrap tires in any amount outside or inside a building shall be deemed a nuisance, a hazard to public health or safety, or a fire hazard unless the tires are stored in accordance with the standards set forth within OAC Rule 3745-27-60(B)(1) - (B)(11) and (C)(1) – (C)(2).
13. OAC Rule 3745-27-60(D) provides that “If upon inspection and written notification, Ohio EPA or the approved health district discover the existence of either one or both of the following:
  - a. Mosquitoes at the premises, the owner or operator shall apply within twenty-four hours or the next business day an adulticide which is registered for use for mosquito control by the Ohio department of agriculture. The application shall be according to the manufacturer's or formulator's recommendations. Records shall be kept at the premises indicating the trade name of the adulticide, the date and time of the application, and the name of the person who applied the adulticide.
  - b. Mosquito larvae at the premises, the owner or operator shall apply within twenty-four hours or the next business day a larvicide which is registered for use for mosquito control by the Ohio department of agriculture. The application shall be according to the manufacturer's or formulator's Recommendations. Records shall be kept at the premises indicating the trade name of the larvicide, the date and time of the application, and the name of the person who applied the larvicide.
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. On June 19, 2018, in response to a complaint received by Lorain County Public Health (LCPH), Ohio EPA, Division of Materials and Waste Management (“DMWM”), Division of Surface Water (“DSW”), and the Division of Environmental Response and Revitalization (“DERR”) along with LCPH conducted an inspection

of the Property, and DMWM and LCPH observed the following violations, *inter alia*:

- a. ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires and other miscellaneous solid wastes.
- b. OAC Rule 3745-400-04(B) for illegal disposal of C&DD.

This inspection was documented in a notice of violation (NOV) letter issued by Ohio EPA, DMWM to Respondent dated July 6, 2018.

16. During the June 19, 2018, inspection LCPH, in addition to the violations cited in Finding No. 15 above, found that the scrap tires on the Property constituted a nuisance and a public health hazard because of Respondent's failure to maintain mosquito control in accordance with OAC Rule 3745-27-60(C) and failure to store scrap tires in accordance with the requirements found in OAC 3745-27-60(B).

Specifically, mosquito larvae were observed in the scrap tires along with swarms of adult mosquitos in the vicinity of the scrap tire piles. Further, there were no fire breaks in the scrap tire piles and the scrap tires were being stored near combustible materials. LCPH notified Respondent of this in a NOV dated June 21, 2018. In this same correspondence, LCPH also ordered Respondent to apply adulticide and larvicide to the scrap tires piles within 24 hours of the receipt of the order in accordance with OAC Rules 3745-27-60(D)(1)-(2).

17. During the June 19, 2018 inspection, Ohio EPA, DSW observed violations of ORC Section 6111.04(A), OAC Rule 3745-38-01(A)(1), and OAC Rule 3745-39-04(A)(1)(b). On June 21, 2018, Ohio EPA, DSW notified Respondent in a NOV of violations of ORC Section 6111.04(A), OAC Rule 3745-38-01(A)(1), and OAC Rule 3745-39-04(A)(1)(b) for the discharge of storm water associated with industrial activities without a National Pollutant Discharge Elimination System permit.
18. During the June 19, 2018 inspection, Ohio EPA, DERR observed a violation of OAC Rule 3745-279-22(D). On June 29, 2018, Ohio EPA, DERR notified Respondent in a NOV of violation of OAC Rule 3745-279-22(D) for failure to clean up releases of used oil to the environment.
19. On July 23, 2018, Ohio EPA and LCHD received notice from the Ohio Department of Health that the mosquito pool collected from the Property was positive for West Nile virus.
20. On August 9, 2018, DMWM and LCPH conducted a follow-up inspection and found violations unaddressed by Respondent.
21. West Nile virus is an arthropod-borne virus (arbovirus) spread by the bite of

infected mosquitoes. Although only approximately 20% of people infected with West Nile virus will become symptomatic, those who do can have symptoms that last for a few days to as long as several weeks and include: fever, headache, body aches, vomiting, swollen lymph glands, and a rash on the chest, stomach or back. In serious cases the symptoms can include high fever, headache, neck stiffness, stupor, disorientation, coma, tremors convulsions, muscle weakness, vision loss, numbness, paralysis, and in rare cases, death.

22. The Property is located within 0.4 to 1.4 miles of several sensitive subpopulations including: Joyful Beginnings Preschool, Willow Creek Positive Education/Brush Elementary, Christian Community School, Midview Elementary Campus, Midview High School, and Grace Lutheran Preschool.
23. Respondent has not responded to the NOVs issued by Ohio EPA and LCPH nor applied adulticide and larvicide as ordered by LCPH.
24. Given the proximity of Respondent's scrap tire piles to several sensitive subpopulations and the confirmed presence of West Nile virus positive mosquitos on the Property, and in consideration of the adverse impact that a tire fire could have on the surrounding population, the Director has determined that the unlawful accumulation of scrap tires on the Property constitutes a danger to the public health or safety or to the environment.
25. 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."
26. 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. . . ."

27. 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 ... [T]he 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 3734. and 6111. 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, at the Property and shall comply with ORC Chapter 3734. and OAC Chapter 3745-27.
2. Upon the effective date of these Orders, Respondent shall cease acceptance and disposal of all C&DD at the Property and shall comply with the provisions of ORC Chapter 3714. and OAC Chapter 3745-400.
3. 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)(1) and (C)(2). Respondent shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3) to Ohio EPA, DMWM and LCPH within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.
4. Not later than thirty (30) days after the effective date of these Orders, Respondent shall establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B)(1) through (B)(8).
5. Not later than thirty (30) days after the effective date of these Orders, Respondent shall submit a Notice of Intent to obtain coverage under the Ohio Multi-Sector General National Pollutant Discharge Elimination System Permit for Storm Water Associated with Industrial Activities (#OHR000006) electronically using the STREAMS application system at Ohio EPA's e-Business Center (<https://ebiz.epa.ohio.gov>).
6. Not later than thirty (30) days after the effective date of these Orders, Respondent shall clean up releases of used oil pursuant to OAC Rule 3745-279-22(D), evaluate

cleanup wastes pursuant to OAC Rule 3745-52-11, and submit documentation of response steps, cleanup wastes evaluation, and documentation of management and disposal of cleanup wastes to Ohio EPA, DERR, Attn: Robert Almquist, 2110 East Aurora Road, Twinsburg, Ohio 44087.

7. Not later than thirty (30) days after the effective date of these Orders, Respondent shall remove or cause the removal of a minimum of ten thousand (10,000) scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires, 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.
8. Not later than sixty (60) days after the effective date of these Orders, Respondent shall have removed or caused the removal of another ten thousand (10,000) scrap tires and arranged for their transportation by a registered scrap tire transporter to a facility of the type designated in Order No. 7.
9. Not later than ninety (90) days after the effective date of these Orders, Respondent shall have removed or caused the removal of another ten thousand (10,000) scrap tires and arranged for their transportation by a registered scrap tire transporter to a facility of the type designated in Order No. 7.
10. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall have removed or caused the removal of all remaining scrap tires from the Property and arranged for their transportation by a registered scrap tire transporter to a facility of the type designated in Order No. 7.
11. Respondent shall obtain receipts from the registered transporter and the facility, indicating weight, volume or number of scrap tires received. Respondent shall forward such documentation to Ohio EPA and LCPH at the addresses found in these Orders under Section VIII., Notice not later than ten (10) days after each removal conducted according to Order Nos. 7, 8, 9, and 10 above.
12. 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 and LCPH at the addresses found in these Orders under Section VIII., Notice 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 and LCPH.

13. 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 and LCPH at the addresses found in these Orders under Section VIII., Notice 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 and LCPH.

## **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 from Respondent: "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 federal, state, and local laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

### **VIII. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Materials and Waste Management  
Attn: DMWM Unit Supervisor  
2110 East Aurora Road  
Twinsburg, Ohio 44087

and to:

Lorain County Public Health  
Attn: Juston R. Carpenter  
9880 South Murray Ridge Road  
Elyria, Ohio 44035

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 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 3714. or 6111. or any other applicable law in the future.

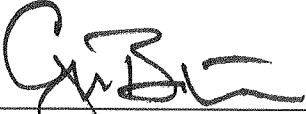
Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

### **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:**

**Ohio Environmental Protection Agency**

A handwritten signature in black ink, appearing to read "Craig W. Butler", written over a horizontal line.

Craig W. Butler, Director