



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

March 31, 2021

Cleveland Pick-a-Part Inc.
dba Cleveland Power and Performance
12420 Station Road
Columbia Station, Ohio 44028

**Re: Cleveland Pick-a-Part Inc.
dba Cleveland Power and Performance
Director's Final Findings and Orders (DFFO)
DFFOs
Scrap Tires
Lorain County
ST024191**

Subject: Final Findings and Orders of the Director

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter regarding **Cleveland Pick-a-Part Inc. dba Cleveland Power and Performance.**

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

Sincerely,

Jeri Main

Jeri Main
Administrative Professional Unit
Division of Materials & Waste Management

Enclosure

ec: Bruce McCoy, DMWM, CO
Kelly Jeter, DMWM, CO
Carl Mussenden, DMWM, CO
Kevin Shoemaker, DMWM, CO
Lynn Sowers, DMWM, NEDO
Teri Finfrock, Legal
Troy Harter, Legal

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Cleveland Pick-a-Part Inc.	:	<u>Director's Final Findings</u>
dba Cleveland Power and Performance	:	<u>and Orders</u>
12420 Station Road	:	
Columbia Station, Ohio 44028	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Cleveland Pick-a-Part Inc. dba Cleveland Power and Performance ("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 its 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 approximately 26.21 acres of land identified by the Lorain County Auditor's Office as parcel number 1200077000032, located at 12420 Station Road, Columbia Station, Lorain County, Ohio ("the Property").
2. Respondent operates an automobile salvage business at the Property. Respondent is an Ohio corporation, and maintains an active motor vehicle salvage license through the Ohio Bureau of Motor Vehicles expiring on July 31, 2021.

Cleveland Power and Performance is an Ohio registered trade name under whose name the Respondent operates.

3. Respondent is a "person" as that term is defined in ORC Section 3734.01(G), and in Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
4. Respondent is an "owner" as that term is defined in OAC Section 3745-27-01(O)(7).
5. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and "solid waste" in OAC Rule 3745-27-01(S)(23).
6. OAC Rule 3745-27-01(S)(6) defines "scrap tire" as "a type of solid waste and means any unwanted or discarded tire, regardless of size, that has been removed from its original use." The definition of "scrap tire" includes "all whole scrap tires and pieces of scrap tires that are readily identifiable as parts of scrap tires by visual inspection."
7. ORC Section 3734.01(I) defines "open dumping" of scrap tires as the depositing of scrap tires "... onto the surface of the ground at a site that is not licensed . . . as a scrap tire collection, storage, monocell, monofill, or recovery facility under section 3734.81 of the Revised Code" or "the depositing of solid wastes that consist of scrap tires onto the surface of the ground at a site or in a manner not specifically identified in divisions (C)(2) to (5) (7), or (10) of section 3734.85 of the Revised Code"
8. OAC Rule 3745-27-01(O)(4)(b) defines open dumping in relevant part 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."
9. The open dumping of scrap tires is a violation of ORC Section 3734.03, which states that "[n]o person shall dispose of solid wastes by open burning or open dumping," and OAC Rule 3745-27-05(C), which provides that "[n]o person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734, of the Revised Code, and shall submit verification that the solid waste has been properly managed."

10. The Property 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 facility, or a solid waste disposal facility.
11. OAC Rule 3745-27-60(B) provides that the storage of scrap tires in any amount is deemed a nuisance, a hazard to public health or safety, or a fire hazard unless the scrap tires are stored in accordance with the specific standards set forth in OAC Rule 3745-27-60(B)(1) – (B)(11). OAC 3745-27-60(B) standards that are relevant to this facility include
 - a. OAC Rule 3745-27-60(B)(1), which requires sufficient drainage to prevent accumulation of water in the scrap tire storage area;
 - b. OAC Rule 3745-27-60(B)(2), which requires that scrap tires be separated from ignition sources by at least fifty feet;
 - c. OAC Rule 3745-27-60(B)(6), which prohibits covering scrap tires with soil;
 - d. OAC Rule 3745-27-60(B)(7)(a), which prohibits storage of scrap tires in individual piles exceeding 2,500 square feet in basal area.
 - e. OAC Rule 3745-27-60(B)(7)(b), which prohibits storage of scrap tires in piles exceeding eight feet in height;
 - f. OAC Rule 3745-27-60(B)(7)(e), which requires sufficient fire breaks around and between scrap tire storage piles.
12. OAC Rule 3745-27-60(C)(2) and (3) require Respondent to maintain proper mosquito control and mosquito control records.
13. On February 21, and February 25, 2019, Lorain County Public Health (Lorain County) received complaints of a large accumulation of scrap tires existing on the Property.
14. Lorain County conducted an inspection of the Property on March 6, 2019, which corroborated the complaint. Lorain County informed Respondent at the time of the inspection that the accumulation of scrap tires on the Property constituted open dumping, and that the scrap tires must be removed from the Property via a registered scrap tire transporter and lawfully disposed.
15. Following the March 2019 inspection, Lorain County maintained monthly contact with Respondent following the site visit while Respondent was pursuing various options for removing the scrap tires.
16. On May 21, 2020, Lorain County, which is on the Director's approved list of health district partners, conducted an additional inspection of the Property to determine

compliance with Ohio's scrap tire laws and rules. During this inspection, Lorain County observed scrap tires stored in large piles throughout the property, including in wooded areas and within automobile interiors. Tires were observed collecting water, covered in soil, and near combustible materials without fire breaks. Following the inspection, Lorain County cited Respondent for violations of scrap tire storage requirements found in OAC Rule 3745-27-60 as well as violations of OAC Rule 3745-27-05(C) for open dumping of scrap tires. The Board of Health sent Respondent a Notice of Violation (NOV) letter dated June 10, 2020.

17. By letter dated, July 1, 2020, counsel for the Respondent replied to the NOV letter dated June 10, 2020 requesting a meeting with Ohio EPA.
18. On July 10, 2020 Representatives of Lorain County and Ohio EPA held a video conference with Respondent and counsel to discuss the accumulation of tires on the Property. Respondent's counsel indicated his client was willing to remove the tires but that they needed time to do so. Respondent and counsel were informed that memorialization of a scrap tire removal schedule would be accomplished through consensual Director's Final Findings and Orders. Further, the parties agreed to make arrangements for Respondent, Lorain County, and Ohio EPA's scrap tire contractor to meet at the Property to conduct a walk through and generate an estimate of the number of scrap tires on-site.
19. On July 23, 2020, the walk through of the site was conducted. Ohio EPA's contractor estimated that there were approximately 30,000 passenger tire equivalents (PTEs) on the Property, representing 330 tons of passenger and truck tires, both on and off rims. Ohio EPA's contractor indicated that the removal would take approximately 10 days to complete.
20. Following the July 23, 2020 walk through and tire estimate, Lorain County and Ohio EPA have only received documentation of the removal of one load of scrap tires from the Property, which occurred on August 12, 2020. During a September 16, 2020 site visit, Lorain County observed no discernible progress toward a scrap tire clean up.
21. Based on the above information, approximately 30,000 PTEs remain disposed or stored on the ground, or within automobiles, located on the Property in violation of OAC Rule 3745-27-05(C) and OAC Rule 3745-27-60.
22. 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.
23. Given that scrap tires constitute a breeding ground for mosquitoes, and given the potential that a scrap tire fire could occur, and given the proximity of the scrap tire pile to local residents, 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.

24. 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.”
25. 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”
26. 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 [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 Chapter 3734 and the rules promulgated thereunder according to the following compliance schedule:

1. Upon the effective date of these Orders, Respondent shall cease open dumping of scrap tires on the Property.
2. Upon the effective date of these Orders, Respondent shall maintain mosquito control in accordance with the provisions of OAC Rule 3745-27-60(C)(2) by keeping all scrap 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. Upon the effective date of these Orders, Respondent shall maintain mosquito control records at the Property indicating the name, type, amount used per tire, and EPA registration number of the pesticide or larvicide, the date and time of the application, and the name of the person who applied the pesticide or larvicide. Respondent shall make the mosquito control records available for inspection by Ohio EPA during normal operating hours and retain copies of the records for a minimum period of three years pursuant to OAC Rule 3745-27-60(C)(3).
4. Upon the effective date of these Orders, Respondent shall designate a secured and covered area for storage of scrap tires generated in the normal course of Respondent's retail business during the removal process described in Order #5. The size of this storage area shall not exceed 2,500 square feet, and the tires accumulated therein shall not be piled in excess of eight (8) feet in height at any point during the removal process described in Order #5.
5. Respondent shall remove or cause the removal of all existing scrap tires from the Property with the exception of the single pile designated in Order #4. Scrap tires to be removed include, but are not limited to, scrap tires dumped onto the ground, buried or partially buried, and scrap tires stored in trailers. Respondent shall transport or cause the scrap tires to be transported, by a registered scrap tire transporter, to a scrap tire storage, monofill, monocell, or recovery facility licensed under ORC Section 3734.81 in Ohio, to such a facility in another state operating in compliance with the laws of the state in which it is located, or to any other solid waste disposal facility in another state that is operating in compliance with the laws of that state. Respondent shall remove, transport, and lawfully dispose of all scrap tires, which are located on the Property, in accordance with the following compliance schedule:
 - a. At least 5,000 scrap tires removed, transported, and lawfully disposed not later than August 1, 2021;
 - b. At least 5,000 scrap tires removed, transported, and lawfully disposed not later than November 1, 2021;
 - c. At least 5,000 scrap tires removed, transported, and lawfully disposed not later than February 1, 2022;
 - d. At least 5,000 scrap tires removed, transported, and lawfully disposed not later than May 1, 2022;
 - e. At least 5,000 scrap tires removed, transported, and lawfully disposed not later than August 1, 2022; and

- f. All remaining scrap tires removed, transported, and lawfully disposed, except for the pile designated in Order #4, not later than November 1, 2022.
6. Respondent shall obtain receipts from the registered transporter and the disposal facility, indicating weight, volume or number of scrap tires received. Respondent shall forward such documentation to Ohio EPA's NEDO-DMWM office, at the address found in these Orders under Section IX., Notice, on a monthly basis by the 10th day of each month, until all scrap tires have been removed.
7. By entry into these Orders, Respondent agree to grant access to the Property to Ohio EPA, its authorized representatives or contractors for such actions as are necessary or appropriate for the purpose of removing and disposing of scrap tires located on the Property, and spraying for mosquitoes in the event that Respondent fails to comply with any deadline presented in Order #5. Respondent hereby agrees to relinquish any claim of ownership interest in any tires that are removed by Ohio EPA, its authorized representatives or contractors from the Property.
8. By entry into these Orders, Respondent hereby agrees to grant access to Ohio EPA, its authorized representatives or contractors to improve existing, or build necessary roads on, over, and across the Property for the purpose of removal of scrap tires disposed at the Property. At the conclusion of any cleanup of any scrap tires from the Property by Ohio EPA, its authorized representatives or contractors, Respondent agree that all improvements shall attach to the Property.
9. Respondent hereby agree to hold the Director, Ohio EPA, its employees, its authorized representatives and contractors harmless for actions taken in accordance with access provided under Orders 7 and 8, and for any action not taken by Ohio EPA, its authorized representatives or contractors at the Property.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrate to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and Ohio EPA's Chief, Division of Materials and Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation from Respondent: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted to Ohio EPA by Respondent seeking termination in accordance with this section and shall be signed by Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, Respondent or the Property.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent or the Property.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

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

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

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 other rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders. Ohio EPA specifically reserves all rights to recover public funds, if expended to address conditions related to the Property by placing a lien on the Property in accordance with ORC Section 3734.85.

XII. WAIVER

Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agrees that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

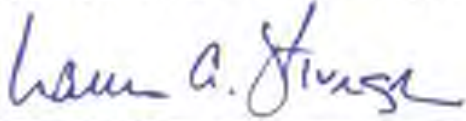
The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders. The parties acknowledge and agree that this Order may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

ORDERED AND AGREED:

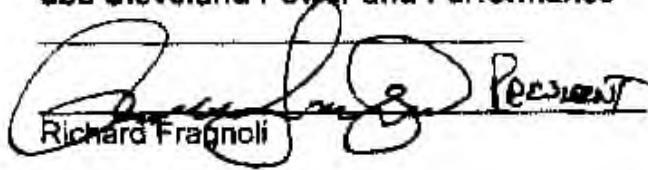
Environmental Protection Agency



Laurie A. Stevenson, Director

AGREED:

**Cleveland Pick-A-Part Inc.
dba Cleveland Power and Performance**



Richard Fragnoli

3/23/21
Date