



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

September 8, 2021

Rodney A. Brock
P.O. Box 308
Malta, Ohio 43758

Jeffrey L. Brock
P.O. Box 308
Malta, Ohio 43758

Bruce L. Brock
P.O. Box 308
Malta, Ohio 43758

**Re: Brock's Automotive
Director's Final Findings and Orders (DFFO)
DFFOs
Scrap Tires
Morgan County
ST023495**

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 **Brock's Automotive**.

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

Sincerely,

Jeri Main

Jeri Main
Administrative Professional Unit
Division of Materials & Waste Management

Enclosure

ec: Bruce McCoy/Carl Mussenden, DMWM, CO
Joseph Goichochea/Richard Fox/ Daniel Bergert, DMWM, SEDO
Richard Miller, DMWM, SWDO
Teri Finrock/Robin Nichols, Legal, CO
Jack Van Klay, Esq., jvankley@vankleywalker.com
Emily Hudson, Emily.Hudson@OhioAGO.gov

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of

Rodney A. Brock	:	<u>Director's Final Findings</u>
PO Box 308	:	<u>and Orders</u>
Malta, Ohio 43758	:	

Jeffrey L. Brock	:
PO Box 308	:
Malta, Ohio 43758	:

Bruce L. Brock	:
PO Box 308	:
Malta, Ohio 43758	:

Respondents

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Rodney A. Brock, Jeffrey L. Brock, and Bruce L. Brock ("Respondents") dba Brock's Automotive pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13, 3734.85, and 3745.01 to modify the Director's Final Findings and Orders dated November 5, 2020.

II. PARTIES

These Orders shall apply to and be binding upon Respondents, and their heirs and successors in interest liable under Ohio law. No change in ownership of the Property (as hereinafter defined) shall in any way alter Respondents' 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. Respondents own property identified by the Morgan County Auditor as Parcel Numbers 070-000-630-0, 070-000-640-0, 070-000-650-0, 070-000-660-0, 070-000-670-0, 070-000-690-0, 070-000-700-0, 070-000-710-0, 070-000-720-0, and 070-000-730-0 located at or about 3182 West State Route 37 in Malta, Ohio, (the "Property"). The Property encompasses acreage on both sides of State Route 37.
2. Respondents are each a "person" as that term is defined in ORC § 3734.01(G), and in Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
3. The Respondents operate Brock's Automotive at the Property, which includes a towing business and recycling drop off. A licensed junk yard was previously operated at the Property; however, Respondents do not maintain a current license to operate through the Morgan County Sheriff.
4. 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."
5. Scrap tires are included in the definition of "solid wastes" under ORC § 3734.01(E) and OAC Rule 3745-27-01(S)(22).
6. 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, or a solid waste disposal facility, nor has any application been submitted.
7. OAC Rule 3745-27-05(C) states, "No 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."
8. On May 10, 2019, Ohio EPA received a complaint regarding Brock's Automotive. Among other things, the complaint alleged that there were numerous scrap tires at the Property.
9. Ohio EPA investigated the complaint by conducting inspections of the Property on May 16, 2019, October 11, 2019, and January 28, 2020. During those inspections, Ohio EPA observed at least seven (7) separate scrap tire piles on the Property, comprised of thousands of scrap tires and located on both the north and south sides of State Route 37. Ohio EPA also observed mosquito larvae within scrap tires.
10. In letters to Respondent Jeffrey Brock, dba Brock's Automotive, dated July 16, 2019, October 25, 2019, and March 13, 2020, Ohio EPA cited violations of OAC

Rule 3745-27-05(C) for open dumping and OAC Rule 3745-27-60(D) for failing to comply with mosquito control requirements (July 16, 2019 and March 13, 2020 letters only).

11. On August 7, 2020, notice of violation letters documenting the violations observed at the Property during the inspections of May 16, 2019, October 11, 2019, and January 28, 2020 and described in Finding No. 9 were sent to Respondents Rodney A. Brock and Bruce L. Brock. The letters also included copies of the July 16, 2019, October 25, 2019, and March 13, 2020 letters previously sent to Respondent Jeffrey Brock.
12. The Director issued Final Findings and Orders to Respondents on November 5, 2020 ("2020 Orders") pursuant to ORC Sections 3734.13 and 3734.85(A). The 2020 Orders required the removal and proper disposal of all scrap tires illegally dumped at the Property not later than March 5, 2021.
13. By letter dated December 16, 2020, Respondents submitted an appeal to the Environmental Review Appeals Commission ("ERAC"), which was filed at ERAC on December 23, 2020, Case Numbers 20-7077, 20-7078, 20-7079.
14. On April 26, 2021, the Director of Ohio EPA filed with ERAC a Motion to Dismiss Respondents' appeal described in Finding No. 13.
15. On June 2, 2021, ERAC issued findings of fact, conclusions of law, and final order granting the Director's Motion to Dismiss Respondents' appeal.
16. Since Respondents submitted its appeal to ERAC, Ohio EPA and Respondents have engaged in discussions where Respondents indicated their willingness to remove and properly dispose of scrap tires from the Property.
17. OAC Rule 3745-27-54(A)(2)(m) states, in relevant part, that a person may transport scrap tires without obtaining a scrap tire transporter registration if the Director specifically authorizes that person, in writing, to transport their scrap tires in order to remove scrap tires from a property to abate a public nuisance or open dump.
18. On March 30, 2021 Ohio EPA issued authorization for Respondents to transport scrap tires from the Property without obtaining a scrap tire transporter registration. That authorization expired June 30, 2021.
19. ORC 3734.85(A) states, in relevant part, "[u]pon the written request of the recipient of an order issued under this division, the director may extend the time for compliance with the order if the request demonstrates that the recipient has acted in good faith to comply with the order. 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."

20. These Orders are intended to modify and supersede portions of Section V of the 2020 Orders.

V. ORDERS

The Director hereby issues the following Orders:

1. Section V of the 2020 Orders is hereby modified to replace Orders 3 through 5 with the following:
 - "3. Upon the effective date of these Orders, Respondents shall provide Ohio EPA with unfettered access to the Property at any time during normal business hours for the purpose of monitoring compliance with these Orders and ORC Chapter 3734 and the rules promulgated thereunder.
 4. In accordance with OAC Rule 3745-27-54(A)(2)(m), upon the effective date of these Orders and continuing until October 31, 2021 or until the scrap tire cleanup at the Property is completed, whichever occurs first, Respondents are authorized to transport scrap tires from the Property to a licensed scrap tire recovery facility, without obtaining a scrap tire registration. This authorization is limited to transporting the scrap tires using vehicles that are owned by, leased by, or have been donated to Respondents. Respondents shall comply with the shipping paper requirements outlined in OAC Rule 3745-27-57 and shall maintain a copy of these Orders in any vehicle used for transportation of scrap tires in accordance with this Order.
 5. Not later than fourteen (14) days after the effective date of Orders, Respondents shall establish and maintain fire lanes at the Property in accordance with OAC Rule 3745-27-60(B)(7)(e).
 6. Respondents shall cause the removal and lawful disposal of the scrap tires at the Property as follows:
 - a.) From August 1, 2021 through September 18, 2021, Respondents shall remove or cause the removal of at least one thousand two hundred (1,200) scrap tires from the Property so that a total of not less than 3,600 scrap tires have been removed from the Property between November 2020 and September 18, 2021.

- b.) During September 2021, Respondents shall remove or cause the removal of at least an additional one thousand two hundred (1,200) scrap tires from the Property so that a total of not less than 4,800 scrap tires have been removed from the Property between November 2020 and September 30, 2021.
 - c.) Not later than October 31, 2021, Respondents shall remove or cause the removal of all remaining scrap tires on the Property, with the exception of up to 100 scrap tires, which may remain at the Property as long as the storage does not cause a nuisance, a hazard to public health or safety, or a fire hazard.
- 7. Not later than the 10th day of each month, Respondents shall electronically submit to Ohio EPA a scrap tire management report for the previous month that at a minimum includes the following:
 - a.) Copies of receipts or, if receipts are unavailable, scrap tire shipping papers for the month that document that the scrap tires have been transferred to an authorized facility. This documentation shall, at a minimum, include: the name of the transporter, the date, the number of tires removed, and the name of the authorized facility that accepted the scrap tires. For tires that have been moved to an authorized facility during the month, but for which the authorized facility has not yet provided written documentation, Respondents shall identify in writing the name of the authorized facility and the number of such tires and shall provide the documentation from the authorized facility to Ohio EPA once it becomes available. All documentation provided shall be submitted electronically and legible;
 - b.) A summary of tire removal activities for the previous month noting the total number of scrap tires removed from the Property; and
 - c.) A summary of mosquito control application for the previous month, including at a minimum the application date, pesticide or larvicide product name, quantity of pesticide or larvicide used, and manufacturer's recommended application frequency.
- 8. By entering into these Orders, Respondents hereby grant access to the Property to Ohio EPA and its employees, authorized representatives, and contractors to perform actions pursuant to ORC Section 3734.85(A) that are necessary or appropriate for the purpose of removing and disposing of scrap tires located on the Property and applying mosquito control in the event that Respondents fail to comply with any deadline required by these Orders. Respondents hereby agree to relinquish any claim of ownership interest in any tires that are removed by Ohio EPA, or its authorized representatives or contractors, from the Property.

9. By entering into these Orders, Respondents hereby agree to grant access to Ohio EPA, and its employees, authorized representatives, and contractors, to improve existing roads 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 and its employees, authorized representatives, and contractors, Respondents agree that all improvements shall attach to the Property.
 10. By entering into these Orders, Respondents hereby agree to move vehicles on the Property, if necessary, to allow access to scrap tires for the purpose of removal by Ohio EPA, and its authorized representatives or contractors.
 11. Respondents hereby agree to hold the Director; Ohio EPA; and Ohio EPA's employees, authorized representatives, and contractors harmless for actions taken and for actions not taken in accordance with access provided under Orders Nos. 3, 8, or 9."
2. Except as specifically set forth in Order No. 1, above, all provisions of the November 2020 Orders remain unchanged and in effect.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

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

This certification shall be submitted by the Respondents to Ohio EPA and shall be signed by each 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, Respondents 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 the Respondents 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 Respondents pursuant to these Orders shall be sent electronically to:

https://files.share.epa.ohio.gov/filedrop/sedo_dmwm_submittals

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to seek civil or administrative penalties against the Respondents for violations specifically cited in these Orders. Ohio EPA and the Respondents each reserve all other rights, privileges, and causes of actions, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondents for violations specifically cited in these Orders, which right Ohio EPA does not waive, compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

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

XIII. EFFECTIVE DATE

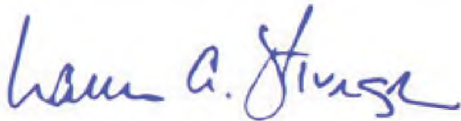
The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he is fully authorized to enter into these Orders and to legally bind such party to these Orders. The parties acknowledge and agree that the 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.

IT IS SO ORDERED AND AGREED:

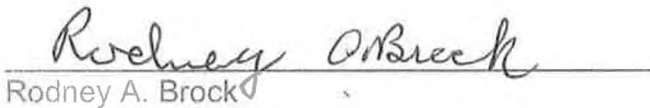
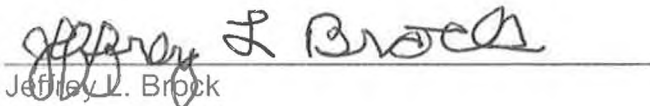
Ohio Environmental Protection Agency



Laurie A. Stevenson
Director

Entered into the Director's Journal

IT IS SO AGREED:


Rodney A. Brock
Jeffrey L. Brock
Bruce L. Brock

