



State of Ohio Environmental Protection Agency

**Northwest District Office**

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Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

Re: Maumee & Western RR  
Referrals #2403 & #2420  
Defiance & Paulding Counties  
Hazardous Waste  
**Fourth Notice of Violation**

July 20, 2007

**CERTIFIED MAIL**

Mr. G. P. Bell, VP Operations  
Maumee & Western Railroad Corp.  
4301 N. Western Avenue  
Connersville, Indiana 47331

Dear Mr. Bell:

On January 5, 2006, I originally investigated two referrals and conducted two compliance evaluation inspections for two Maumee & Western Railroad Corp. (M&W) facilities. **Referral #2403** was for the facility at 817 Fifth Street in Defiance, Ohio and **Referral #2420** was for a track area in Antwerp, Ohio. According to Referral #2403, received by Ohio EPA's Division of Hazardous Waste Management, an Ohio EPA staff member observed 30-40 rusted drums by the tracks at the Defiance facility. According to Referral #2420, Ohio EPA's Division of Emergency and Remedial Response (DERR) reported drums of waste along the tracks in Antwerp. I inspected both M&W facilities to determine its compliance with Ohio's hazardous waste laws as found in Chapter 3734. of the Ohio Revised Code (ORC) and Chapter 3745. of the Ohio Administrative Code (OAC). I was accompanied by Jim Sellers of M&W at both locations. My inspections included observations of facility operations and a review of written documentation.

On April 10, 2007, I conducted another investigation of the facility at 817 Fifth Street in Defiance, Ohio. I inspected the Defiance facility to determine its compliance with Ohio's hazardous waste laws as found in Chapter 3734. of the Ohio Revised Code (ORC) and Chapter 3745. of the Ohio Administrative Code (OAC).

On July 12, 2007, I met you at your 817 Fifth Street facility in Defiance, Ohio, and conducted another investigation. Later in the day I conducted an investigation of the track area in Antwerp, Ohio. I inspected the two facilities to determine M&W's compliance with Ohio's hazardous waste laws as found in Chapter 3734. of the Ohio Revised Code (ORC) and Chapter 3745. of the Ohio Administrative Code (OAC). We also discussed your plans for correcting the violations already cited in past Notice of Violation letters. This letter will explain the violations I have already found and the new violations found on July 12, 2007 and what you need to do to correct the violations.

**All the violations previously cited persist and remain unabated. Additional violations were discovered on July 12, 2007, and will be cited in this letter. The original Notice of Violation (NOV) letter was sent to you by certified mail on February 2, 2006. You did not respond to that NOV. Another NOV was sent by certified mail on January 10, 2007.**

**You did not respond to that NOV either. A third NOV was sent by certified mail on June 1, 2007. You have not yet responded in writing to this June NOV.**

Furthermore, on July 22, 1992, Ohio EPA conducted a complaint investigation at the Fifth Street facility in Defiance, Ohio. The complaint alleged that oil from locomotives was drained onto the ground and then covered with fresh stone. In a letter dated July 22, 1992, Ohio EPA informed Indiana Hi-Rail Corporation, now known as Maumee & Western Railroad Corp., that oil should be properly recycled.

On October 5, 1993, Ohio EPA conducted another complaint investigation at the Fifth Street facility in Defiance, Ohio. The complaint concerned abandoned drums and contamination of the area. In a Notice of Violation (NOV) letter dated October 29, 1993, Ohio EPA cited Indiana Hi-Rail (IHR) in violation of OAC Rule 3745-52-11 for failure to evaluate all the wastes at the facility to determine if they were hazardous waste and ORC Section 6111.04 for releasing waste to the ground where it can cause pollution of the waters of the state. The following types of waste were observed: Two 55-gallon drums of used anti-freeze, and approximately thirty 55-gallon drums of unknown waste. One drum, beside the rail car, was pushed on its side and was leaking liquid and contaminating the ground. IHR was required to evaluate all its waste and clean up contaminated soil. In a letter dated November 10, 1993, you submitted a plan to address the problems at the Defiance, Ohio facility. Your plan included the following, to be completed by December 10, 1993:

1. Drums will be labeled, dated and stored in the maintenance car.
2. The ground contamination will be removed and processed by BFI.

In a letter from Ohio EPA to you dated January 26, 1994, Ohio EPA explained that oil contaminated soil, if not a hazardous waste, is a solid waste which must be sent to a licensed solid waste disposal facility and required you to submit documentation of its proper disposal. You did not respond to this letter. So in a letter from Ohio EPA, dated April 15, 1994, Ohio EPA again required you to submit this information. On May 10, 1994, you submitted a BFI manifest demonstrating that contaminated soil was taken to BFI's Vienna Junction facility in Michigan. Finally, in a letter from Ohio EPA to you, the Agency reminded you to maintain the Defiance facility in an environmentally sound manner.

On January 5, 2006, Mr. Sellers explained that the M&W engines are on a 92 day inspection schedule. The oil filters are changed at this time. The diesel engine has several oil filters. At least one of the filters is approximately 3 feet long and 10 inches in diameter. American Maintenance & Training (AM&T) does the routine maintenance; replacing the filters and inspecting the engine. According to Jim Sellers, AM&T takes the used oil filters away with them.

Each engine has a "pollution tank". Under the engine is a drip pan that collects oil, antifreeze/water leaks and drips. This mixture drains into the pollution tank. There is a valve for the pollution tank on the side of the engine. (See the file for a picture of this.) The waste is emptied into buckets and currently poured into 55-gallon drums. Approximately 1-2 drums are generated every 3-4 weeks in the winter (a little less in the summer).

I found the following violations of Ohio's hazardous waste laws. In order to correct these violations, you must do the following and send me the required information **immediately**:

**FOR THE DEFIANCE FACILITY:**

**NEW VIOLATIONS OBSERVED ON JULY 12, 2007**

1. **Unpermitted Hazardous Waste Treatment, Storage & Disposal  
ORC Section 3734.02(E)&(F)**

No person shall store, treat, or dispose of hazardous waste identified or listed under this chapter and rules adopted under it, regardless of whether generated on or off the premises where the waste is stored, treated, or disposed of, or transport or cause to be transported any hazardous waste identified or listed under this chapter and rules adopted under it to any other premises, except at or to any of the following: (1) A hazardous waste facility operating under a permit issued in accordance with this chapter; (2) A facility in another state operating under a license or permit issued in accordance with the "Resource Conservation and Recovery Act of 1976" 90 Stat. 2806, 42 U.S.C.A. 6921, as amended.

**M&W has again become an unpermitted hazardous waste disposal facility by: dumping a spent battery in a pile of solid waste near the Defiance facility and allowing the contents of the broken lead acid battery (D008 & D002) to be discharged to the ground. M&W must immediately cease unpermitted disposal of its hazardous waste batteries.**

M&W must immediately place this broken battery into a closed container compatible with the waste and explain to Ohio EPA how it intends to manage all spent batteries in compliance with Ohio's rules. M&W must also provide documentation that describes the procedures that will be taken, immediately, to ensure that unpermitted treatment, storage and disposal does not happen again.

Since M&W has again violated ORC Section 3734.02(E) & (F) by becoming an unpermitted disposal facility (TSD), it is subject to OAC Rules 3745-55-10 through 3745-55-48 and 3745-55-97. Therefore, you are required to submit a closure plan that includes this dump area, to the Director of Ohio EPA. A closure plan describes the steps necessary to investigate the extent of contamination and to clean up all contamination found.

M&W also is subject to all applicable general facility standards, found in OAC Chapters 3745-54 and 55, until such time as M&W has demonstrated that it has ceased operations as a disposal facility. Additionally, at any time, Ohio EPA may assert its right to have M&W begin facility-wide cleanup, pursuant to the Corrective Action process under Ohio law.

I also observed various used oil filters in this unpermitted waste pile. M&W must ensure the proper management of all its used oil waste. M&W must explain how it will avoid dumping used oil waste in the future.

2. **Waste Evaluation  
OAC Rule 3745-52-11**

A generator must determine whether its waste is hazardous by first determining if the waste is listed as a hazardous waste in rules 3745-51-30 to 3745-51-35; by testing the waste according to the methods set forth in rules 3745-51-20 to 3745-51-24; or by applying knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.

M&W has failed to adequately evaluate all of its waste properly. Specifically, the following wastes have not been properly evaluated:

1. One Full Open Top 55-gallon Drum of Waste: On July 12, 2007, both you and I observed one open top 55-gallon drum of waste that was filled to within one quarter inch of the top. This drum was so full of waste that the wind was nearly blowing the waste out, where it would have been released to the ground. I obtained photographs of this drum. On this day, you said that you would have the waste placed into another drum right away. Once you do, label it so that it can be later specifically identified as the waste in the photo. See the enclosed photo of the drum.
2. One Leaking Drum of Waste: On July 12, 2007, both you and I observed one 55-gallon drum that was leaking waste to the ground. I obtained photographs of this drum. On this day, you said that you would have the waste placed into another drum right away. Once you do, label it so that it can be later specifically identified as the waste in the photo. See the enclosed photo of the drum.
3. New Waste Pile #1: I observed and photographed a waste pile, located west of the Defiance facility, beside a brick building with a blue awning. See the enclosed photo.
4. New Waste Pile #2: I observed and photographed a waste pile, located west of the Defiance facility, beside a building with brown siding. See the enclosed photo.
5. 5-gallon Pail: I observed and photographed a full 5-gallon pail of waste behind a truck, with the license plate 226227, at the Defiance facility.
6. Yellow Collection Pail: I observed and photographed a yellow collection pail, filled with a waste liquid, sitting on top of waste drums outside the railcar at the Defiance facility.

In order to abate this violation, you must immediately evaluate the wastes listed above, and any other waste discovered at the facility by Ohio EPA or M&W, in accordance with the requirements of Ohio Administrative Code Rule 3745-52-11 and this letter. You must obtain a representative sample of each waste pile and the liquid waste at the facility, according to OAC 3745-51-20. You must evaluate all samples, through laboratory analysis, for at least the TCLP metals and VOCs, any appropriate characteristic (such as ignitability - D001) and listing and submit the results of the laboratory analyses to Ohio EPA as soon as they are available. **M&W will need to give Ohio EPA a five day advance notice of sampling activities, in order for an inspector to make arrangements to view the sampling.**

Before sampling, you must submit a sampling and analysis plan, for Ohio EPA's approval, which explains, in writing, how you will obtain a representative sample of each waste pile and the liquid waste (including the number of samples and the number of containers sampled), the sampling equipment to be used (collectors and sample containers), who will collect it, who will analyze it and how it will be analyzed (constituents and method numbers). Please refer to the following guidance document for help with writing your waste sampling and analysis plan: RCRA Waste Sampling Draft Technical Guidance. It can be found at:

<http://www.epa.gov/epaoswer/hazwaste/test/pdfs/rwsdtg.pdf>

The complete analytical results from implementation of the approved sampling and analysis plan must be submitted to me as soon as they are available.

Your results must document if the waste is hazardous or not and whether it is restricted from land disposal. If it is hazardous, you must explain what treatment, storage or disposal facility you will send it to. M&W must submit to me a legible copy of the manifest(s), signed by a representative of the permitted treatment, storage or disposal facility, that documents the proper off-site shipment of all its hazardous waste. If non-hazardous waste is identified, M&W must submit a copy(s) of the shipping papers used to transport the waste off-site. **If the waste is hazardous, I will determine the status of your facility's compliance with other hazardous waste laws and notify you of my findings in a separate letter.**

Ohio EPA will use the data you provide, in addition to other documentation, to make regulatory decisions concerning the waste(s) tested. The data you submit should be reviewed using a data review process, referred to as **data validation**, to confirm the validity of your data prior to submission. Data validation includes a review of the following components: laboratory test methods, laboratory data completeness, documentation of holding time(s), chain(s) of custody, and quality assurance/quality control (QA/QC) data. To confirm the validity of your data, you may use Ohio EPA's tier 1 data validation plan review form, which can be obtained from Ohio EPA's web page: [http://www.epa.state.oh.us/dhwm/tier\\_1\\_data\\_validation\\_manual.html](http://www.epa.state.oh.us/dhwm/tier_1_data_validation_manual.html). Ohio EPA may request the documentation needed to confirm the validity of the data submitted.

Please submit, with your laboratory data, a brief narrative of each sampling event which includes: process generating the waste, point in the process the sample was obtained, sampling techniques used to obtain the sample and a description of how this sample was determined to be a representative sample of the waste tested.

**3. Response to Releases of Used Oil  
OAC Rule 3745-279-22(D)**

Upon detection of a release of used oil to the environment a generator shall perform the following cleanup steps: stop the release, contain the released used oil, clean up and manage properly the released used oil and other materials, and if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

Used oil mismanagement at M&W has contaminated the soil along the rails at the Defiance facility. M&W may also have contaminated this area from its mismanagement of used antifreeze. See the enclosed photo for the area of track described here. The contaminated soil in this area has not been cleaned up. In order to correct this violation, M&W must immediately clean up the contaminated soil, analyze the soil for hazardous characteristics, and manage the waste properly according to the analytical information. M&W must avoid creating waste piles when removing contaminated soil. You will need to provide photographic documentation that the areas have been cleaned. You will need to submit copies of the waste analyses and any shipping papers or manifests, demonstrating that you have sent the waste off-site for proper disposal. **Please explain how you will correct this violation and maintain compliance with this rule.**

According to OAC Rule 3745-52-11, a generator must determine whether its waste is hazardous by testing the waste according to the methods set forth in rules 3745-51-20 to 3745-51-24 or by applying knowledge of the hazardous characteristic(s) of the waste in light of the materials or the processes used. The generator must also determine if the waste has to be treated before it can be land disposed.

In order for M&W to determine the characteristics of the used oil contaminated soil, it must obtain a chemical analysis of a representative sample of the contaminated soil. M&W must determine, at least, the concentration of TCLP metals, benzene and MEK .

Please explain, in writing, how you will obtain a representative sample, who will collect it, who will analyze it and how it will be analyzed. The complete analytical results must be submitted to me as soon as they are available. Your results must document if the waste is hazardous or not and whether it is restricted from land disposal. If it is hazardous, you must explain what treatment, storage or disposal facility you will send it to. If the waste is hazardous, I will determine the status of your company's compliance with other hazardous waste laws and notify you of my findings in a separate letter.

**You must coordinate the soil cleanup and sampling at all locations with the Ohio EPA. Please contact me no later than five business days before you plan to have the cleanup and sampling performed.**

#### **NEW VIOLATIONS OBSERVED ON APRIL 10, 2007**

**1. Unpermitted Hazardous Waste Treatment, Storage & Disposal  
ORC Section 3734.02(E)&(F)**

No person shall store, treat, or dispose of hazardous waste identified or listed under this chapter and rules adopted under it, regardless of whether generated on or off the premises where the waste is stored, treated, or disposed of, or transport or cause to be transported any hazardous waste identified or listed under this chapter and rules adopted under it to any other premises, except at or to any of the following: (1) A hazardous waste facility operating under a permit issued in accordance with this chapter; (2) A facility in another state operating under a license or permit issued in accordance with the "Resource Conservation and Recovery Act of 1976" 90 Stat. 2806, 42 U.S.C.A. 6921, as amended.

**M&W has become an unpermitted hazardous waste disposal facility by: allowing the contents of lead acid batteries (D008 & D002) to be discharged to the ground, and to the floor of the rail car from broken batteries stored in these locations, in the following manner:**

- 1. During investigations on April 26, 2005, and January 5, 2006, I observed and photographed broken batteries stored on the ground behind the rail car, where their contents were allowed to be discharged to the ground. On January 5, 2006, Mr. Sellers explained that some batteries are from railroad switches and some are from vehicles. Five were broken open. This appears to have occurred over the years due to weathering and careless storage.**
- 2. During an investigation on April 10, 2007, I observed and photographed broken and leaking batteries stored on the floor of the rail car, where their contents were allowed to be discharged to the floor of the rail car.**

**This has been the procedure for at least two years. M&W must immediately cease unpermitted disposal of its hazardous waste.**

M&W must immediately place all broken batteries into a closed container compatible with the waste and explain to Ohio EPA how it intends to manage all spent batteries in compliance with Ohio's rules. M&W must also provide documentation that describes the procedures that will be taken, immediately, to ensure that unpermitted treatment, storage and disposal does not happen again.

Since M&W has violated ORC Section 3734.02(E) & (F) by becoming an unpermitted disposal facility (TSD), it is subject to OAC Rules 3745-55-10 through 3745-55-48 and 3745-55-97. Therefore, you are required to submit a **closure plan** for the ground and the floor of the rail car, to the Director of Ohio EPA. A closure plan describes the steps necessary to investigate the extent of contamination and to clean up all contamination found.

M&W also is subject to all applicable general facility standards, found in OAC Chapters 3745-54 and 55, until such time as M&W has demonstrated that it has ceased operations as a disposal facility. Additionally, at any time, Ohio EPA may assert its right to have M&W begin facility-wide cleanup, pursuant to the Corrective Action process under Ohio law.

**2. Waste Evaluation**  
**OAC Rule 3745-52-11**

A generator must determine whether its waste is hazardous by first determining if the waste is listed as a hazardous waste in rules 3745-51-30 to 3745-51-35; by testing the waste according to the methods set forth in rules 3745-51-20 to 3745-51-24; or by applying knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.

M&W has failed to adequately evaluate all of its waste properly. Specifically, the following wastes have not been properly evaluated:

1. Three Piles of Contaminated Soil: I observed and photographed three piles of contaminated soil placed on plastic sheeting along the rail line, west of the office building. M&W must obtain a laboratory analysis of this waste for at least the Toxicity Characteristic Leaching Procedure (TCLP) metals and VOCs.
2. One Pail of Red Liquid: I observed one 5-gallon pail of red oily liquid on the ground outside the rail car. The ground around it was contaminated. M&W must obtain a laboratory analysis of this waste for at least the TCLP metals and VOCs.

In order to abate this violation, you must immediately evaluate the waste piles and container of liquid waste listed above, in accordance with the requirements of Ohio Administrative Code Rule 3745-52-11 and this letter. You must obtain a representative sample of each waste pile and the red liquid waste at the facility, according to OAC 3745-51-20. You must evaluate all samples, through laboratory analysis, for at least the TCLP metals and VOCs, any appropriate characteristic and listing and submit the results of the laboratory analyses to Ohio EPA as soon as they are available. **M&W will need to give Ohio EPA a five day advance notice of sampling activities, in order for an inspector to make arrangements to view the sampling.**

Before sampling, you must submit a sampling and analysis plan, for Ohio EPA's approval, which explains, in writing, how you will obtain a representative sample of each waste pile and the liquid waste (including the number of samples and the number of containers sampled), the sampling equipment to be used (collectors and sample containers), who will collect it, who will analyze it and how it will be analyzed (constituents and method numbers). Please refer to the following guidance document for help with writing your waste sampling and analysis plan: RCRA Waste Sampling Draft Technical Guidance. It can be found at:  
<http://www.epa.gov/epaoswer/hazwaste/test/pdfs/rwsdtg.pdf>

The complete analytical results from implementation of the approved sampling and analysis plan must be submitted to me as soon as they are available. Your results must document if the waste is hazardous or not and whether it is restricted from land disposal. If it is hazardous, you must explain what treatment, storage or disposal facility you will send it to. M&W must submit to me a legible copy of the manifest(s), signed by a representative of the permitted treatment, storage or disposal facility, that documents the proper off-site shipment of all its hazardous waste. If non-hazardous waste is identified, M&W must submit a copy(s) of the shipping papers used to transport the waste off-site. **If the waste is hazardous, I will determine the status of your facility's compliance with other hazardous waste laws and notify you of my findings in a separate letter.**

Ohio EPA will use the data you provide, in addition to other documentation, to make regulatory decisions concerning the waste(s) tested. The data you submit should be reviewed using a data review process, referred to as data validation, to confirm the validity of your data prior to submission. Data validation includes a review of the following components: laboratory test methods, laboratory data completeness, documentation of holding time(s), chain(s) of custody, and quality assurance/quality control (QA/QC) data. To confirm the validity of your data, you may use Ohio EPA's tier 1 data validation plan review form, which can be obtained from Ohio EPA's web page: [http://www.epa.state.oh.us/dhwm/tier\\_1\\_data\\_validation\\_manual.html](http://www.epa.state.oh.us/dhwm/tier_1_data_validation_manual.html). Ohio EPA may request the documentation needed to confirm the validity of the data submitted.

Please submit, with your laboratory data, a brief narrative of each sampling event which includes: process generating the waste, point in the process the sample was obtained, sampling techniques used to obtain the sample and a description of how this sample was determined to be a representative sample of the waste tested.

**3. Used Oil Labeling  
OAC Rule 3745-279-22(C)(1)**

Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

M&W failed to label many containers of used oil with the words "Used Oil". In order to correct this violation, M&W must label all containers of used oil with the words "Used Oil" and submit to me photographs documenting their proper labeling.

**4. Response to Releases of Used Oil  
OAC Rule 3745-279-22(D)**

Upon detection of a release of used oil to the environment a generator shall perform the following cleanup steps:

stop the release, contain the released used oil, clean up and manage properly the released used oil and other materials, and if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

Used oil mismanagement at M&W has contaminated the soil in several large areas. (M&W may also have contaminated the soil from its mismanagement of used antifreeze. This may be addressed in a separate letter.)

The contaminated soil in these areas was not cleaned up. In order to correct these violations, M&W must immediately clean up the contaminated soil, analyze the soil for hazardous characteristics, and manage the waste properly according to the analytical information. M&W must avoid creating waste piles when removing contaminated soil. You will need to provide photographic documentation that the areas have been cleaned. You will need to submit copies of the waste analyses and any shipping papers or manifests, demonstrating that you have sent the waste off-site for proper disposal. **Please explain how you will correct this violation and maintain compliance with this rule.**

According to OAC Rule 3745-52-11, a generator must determine whether its waste is hazardous by testing the waste according to the methods set forth in rules 3745-51-20 to 3745-51-24 or by applying knowledge of the hazardous characteristic(s) of the waste in light of the materials or the processes used. The generator must also determine if the waste has to be treated before it can be land disposed.

In order for M&W to determine the characteristics of the used oil contaminated soil, it must obtain a chemical analysis of a representative sample of the contaminated soil. M&W must determine, at least, the concentration of TCLP metals, benzene and MEK .

Please explain, in writing, how you will obtain a representative sample, who will collect it, who will analyze it and how it will be analyzed. The complete analytical results must be submitted to me as soon as they are available. Your results must document if the waste is hazardous or not and whether it is restricted from land disposal. If it is hazardous, you must explain what treatment, storage or disposal facility you will send it to. If the waste is hazardous, I will determine the status of your company's compliance with other hazardous waste laws and notify you of my findings in a separate letter.

**You must coordinate the soil cleanup and sampling at all locations with the Ohio EPA. Please contact me no later than five business days before you plan to have the cleanup and sampling performed.**

**VIOLATIONS ORIGINALLY FROM THE FEBRUARY 2, 2006 AND JANUARY 10, 2007 NOVs**

Note: These violations are updated, based on my April 10, 2007, investigation, and in some cases modified. Please read this entire NOV carefully.

1. Waste Evaluation  
OAC Rule 3745-52-11

A generator must determine whether its waste is hazardous by first determining if the waste is listed as a hazardous waste in rules 3745-51-30 to 3745-51-35; by testing the waste according to the methods set forth in rules 3745-51-20 to 3745-51-24; or by applying knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.

M&W has failed to adequately evaluate all of its waste properly, according to this rule. In fact, at the time of my initial inspection, M&W did not know the contents of any of the dozens of drums being stored on the ground.

According to Mr. Sellers, on January 5, 2006, Safety-Kleen pumped out approximately nine (9) 55-gallon drums of the waste on January 4, 2006, the day before my investigation. I had already told M&W that it was alright to have their used oil sent off-site for recycling, whenever it was possible, as long as the paper work was presented on the day of my investigation. However, it was not clear how Safety-Kleen determined what was in the drums. M&W did not accompany the Safety-Kleen representative when the waste was removed. Furthermore, it was reported that several of the drums have a thick sludge in the bottom of them and could not be completely pumped out. Mr. Sellers provided a copy of the Safety-Kleen shipping paper.

M&W must evaluate the following wastes:

1. Waste Sludge: As described above, there are drums on-site that have unpumpable sludge in the bottom. It is not known exactly how many drums of sludge are present. **M&W must determine how many drums of waste sludge are present. M&W must have a laboratory analysis of this waste performed for at least the flash point and the TCLP metals and VOCs.**
2. Drums of Antifreeze: There were five drums of spent antifreeze located near the office on January 5, 2006. There were at least three drums of spent anti-freeze located near the boxcar on April 10, 2007. On January 5, 2006, Mr. Sellers reported that he had asked AM&T to come to the site and determine if the antifreeze was useable. M&W must clearly demonstrate if the spent antifreeze is useable. If not, it is a waste. **If it is waste, M&W must obtain a laboratory analysis of this waste for at least the flash point and the TCLP metals and VOCs.** If the analytical results demonstrate that it has a characteristic of hazardous waste, then M&W must send it to a permitted hazardous waste facility. If the analytical results demonstrate that it has no hazardous characteristic, it can be sent to a recycler.
3. Containers in Storage Car: M&W must evaluate the drums and containers of waste in the storage car (boxcar). If these drums can be positively identified as used oil, in a way that is acceptable to Ohio EPA, then M&W should make arrangements to have the used oil sent to a recycler as soon as possible. Since the floor is contaminated, if the waste is identified as used oil, M&W should make arrangements to immediately accumulate its used oil in a manner that will prevent leaks and releases and clean the floor. **If the waste cannot be positively identified, then M&W must submit a sampling and analysis plan suitable for identifying an unknown waste.** If any waste in the storage car is a hazardous waste, it may be necessary for M&W to decontaminate the floor. Any hazardous waste found must be sent to a permitted treatment, storage or disposal facility, immediately, and I will notify you of any other violations in a separate letter.
4. Waste Batteries: M&W has accumulated used batteries. The storage area is on the ground behind the storage car and on the floor of the storage car. Mr. Sellers explained that some are from railroad switches and some are from vehicles. Five are broken open. This appears to have occurred over the years due to weathering and careless storage.

**The broken batteries must be evaluated for all hazardous characteristics. M&W must have a laboratory analysis of these wastes performed for at least the TCLP metals and pH.**

5. All Other Containers: On April 10, 2007, there were at least twenty-five 55-gallon drums and twelve 5-gallon pails of waste at the facility. Some of the containers were open and some were badly damaged or on their sides. **All containers should be placed upright and closed.** Some of the same drums observed on April 26, 2005, are still on-site. M&W must evaluate all the containers on the ground at the facility, not already noted above. If any of these drums can be positively identified as used oil, in a way that is acceptable to Ohio EPA, then M&W should make arrangements to have the used oil sent to a recycler as soon as possible. If any of these drums can be identified as empty, Ohio EPA recommends that M&W recycle them as scrap metal, in order to help maintain a clean yard. **If any of these drums can be identified as waste antifreeze, or a waste antifreeze mixture, M&W must obtain a laboratory analysis of this waste for at least the flash point and the TCLP metals and VOCs.** If the analytical results demonstrate that it has a characteristic of hazardous waste, then M&W must send it to a permitted hazardous waste facility. If the analytical results demonstrate that it has no hazardous characteristic, it can be sent to a recycler.

On January 5, 2006, a large area of the ground was extremely contaminated. On April 10, 2007, I again observed a large area of contaminated soil. M&W should make arrangements to immediately accumulate its used oil in a manner that will prevent leaks and releases. If any waste on the ground is a hazardous waste, it may be necessary for M&W to decontaminate the ground (closure). **If the waste cannot be positively identified, then M&W must submit a sampling and analysis plan suitable for identifying an unknown waste.**

In order to abate these violations, you must immediately evaluate the wastes listed above, in accordance with the requirements of Ohio Administrative Code Rule 3745-52-11 and this letter. You must obtain a representative sample of the wastes at the Facility, according to OAC 3745-51-20. You must evaluate all samples, through laboratory analysis (unless otherwise noted in this Notice of Violation), for all appropriate characteristics and listings and submit the results of the laboratory analysis to Ohio EPA. M&W will need to give Ohio EPA a five day advance notice of sampling activities, in order for an inspector to make arrangements to view the sampling.

Before sampling, you must submit a sampling and analysis plan, for Ohio EPA's approval, which explains, in writing, how you will obtain a representative sample of each type of waste (including the number of samples and the number of containers sampled), the sampling equipment to be used (collectors and sample containers), who will collect it, who will analyze it and how it will be analyzed (constituents and method numbers). Please refer to the following guidance document for help with writing your waste sampling and analysis plan: RCRA Waste Sampling Draft Technical Guidance. It can be found at: <http://www.epa.gov/epaoswer/hazwaste/test/pdfs/rwsdtg.pdf>

The complete analytical results from implementation of the approved sampling and analysis plan must be submitted to me as soon as they are available. Your results must document if the waste is hazardous or not and whether it is restricted from land disposal. If it is hazardous, you must explain what treatment, storage or disposal facility you will send it to.

M&W must submit to me a legible copy of the manifest(s), signed by a representative of the permitted treatment, storage or disposal facility, that documents the proper off-site shipment of all its hazardous waste. If non-hazardous waste is identified, M&W must submit a copy(s) of the shipping papers used to transport the waste off-site. **If the waste is hazardous, I will determine the status of your facility's compliance with other hazardous waste laws and notify you of my findings in a separate letter.**

Ohio EPA will use the data you provide, in addition to other documentation, to make regulatory decisions concerning the waste(s) tested. The data you submit should be reviewed using a data review process, referred to as **data validation**, to confirm the validity of your data prior to submission. Data validation includes a review of the following components: laboratory test methods, laboratory data completeness, documentation of holding time(s), chain(s) of custody, and quality assurance/quality control (QA/QC) data. To confirm the validity of your data, you may use Ohio EPA's tier 1 data validation plan review form, which can be obtained from Ohio EPA's web page: [http://www.epa.state.oh.us/dhwm/tier\\_1\\_data\\_validation\\_manual.html](http://www.epa.state.oh.us/dhwm/tier_1_data_validation_manual.html). Ohio EPA may request the documentation needed to confirm the validity of the data submitted.

Please submit, with your laboratory data, a brief narrative of each sampling event which includes: process generating the waste, point in the process the sample was obtained, sampling techniques used to obtain the sample and a description of how this sample was determined to be a representative sample of the waste tested.

In order to assist you in evaluating your wastes I enclosed with past violation letters copies of the following documents: Managing Your Hazardous Waste and The Regulation of Used Oil: Used Oil Generators. I strongly urge you to review these documents carefully and contact me immediately, if you have any questions.

\*\*\*\*\*

## **FOR THE ANTWERP FACILITY:**

### **NEW VIOLATIONS OBSERVED ON JULY 12, 2007**

#### **1. Waste Evaluation OAC Rule 3745-52-11**

A generator must determine whether its waste is hazardous by first determining if the waste is listed as a hazardous waste in rules 3745-51-30 to 3745-51-35; by testing the waste according to the methods set forth in rules 3745-51-20 to 3745-51-24; or by applying knowledge of the hazardous characteristic of the waste in light of the materials or the processes used.

1. On January 5, 2006, I observed four (4) 55-gallon drums of waste at the side of the track near the grain elevators in the Paulding County town of Antwerp. On January 5, 2006, Mr. Sellers explained that a locomotive was rebuilt after a piston broke in the engine. It was the #7 engine on the western end of the line. It seems that it was repaired about April of 2005. It was repaired on the tracks beside the grain elevator in Antwerp. The repair company was not AM&T, it was another company. In the process of repair, oil was pumped out of the locomotive and the intention was to reuse it. However, it turned out to be too contaminated with metal debris to reuse.

On July 12, 2007, I observed and photographed the same drums. They have been abandoned by M&W. Ohio EPA has determined that the four drums of waste beside the rail in Antwerp cannot be considered used oil since M&W cannot demonstrate that the repair company did not use any other chemicals in the repair process. Therefore, M&W has not properly evaluated the waste and must do so **immediately**.

2. **One 55-gallon Drum**: On July 12, 2007, I observed and photographed one black 55-gallon drum of waste, located beside the rail directly across from the four 55-gallon drums of waste described above. This drum contains waste and has a flammable liquids label attached.
3. **One 5-gallon Pail**: On July 12, 2007, I observed and photographed one 5-gallon pail of waste, located along the rail, beside the black 55-gallon drum of waste described above.

In order to abate this violation, you must immediately evaluate the wastes listed above, and any other waste discovered at the facility by Ohio EPA or M&W, in accordance with the requirements of Ohio Administrative Code Rule 3745-52-11 and this letter. You must obtain a representative sample of each waste at the facility, according to OAC 3745-51-20. You must evaluate all samples, through laboratory analysis, for at least flash point, TCLP metals and VOCs, and any appropriate characteristic and listing and submit the results of the laboratory analyses to Ohio EPA as soon as they are available. **M&W will need to give Ohio EPA a five day advance notice of sampling activities, in order for an inspector to make arrangements to view the sampling.**

Before sampling, you must submit a sampling and analysis plan, for Ohio EPA's approval, which explains, in writing, how you will obtain a representative sample of the liquid waste (including the number of samples and the number of containers sampled), the sampling equipment to be used (collectors and sample containers), who will collect it, who will analyze it and how it will be analyzed (constituents and method numbers). Please refer to the following guidance document for help with writing your waste sampling and analysis plan: RCRA Waste Sampling Draft Technical Guidance. It can be found at: <http://www.epa.gov/epaoswer/hazwaste/test/pdfs/rwsdtg.pdf>

The complete analytical results from implementation of the approved sampling and analysis plan must be submitted to me as soon as they are available. Your results must document if the waste is hazardous or not and whether it is restricted from land disposal. If it is hazardous, you must explain what treatment, storage or disposal facility you will send it to. M&W must submit to me a legible copy of the manifest(s), signed by a representative of the permitted treatment, storage or disposal facility, that documents the proper off-site shipment of all its hazardous waste. If non-hazardous waste is identified, M&W must submit a copy(s) of the shipping papers used to transport the waste off-site. **If the waste is hazardous, I will determine the status of your facility's compliance with other hazardous waste laws and notify you of my findings in a separate letter.**

Ohio EPA will use the data you provide, in addition to other documentation, to make regulatory decisions concerning the waste(s) tested. The data you submit should be reviewed using a data review process, referred to as data validation, to confirm the validity of your data prior to submission. Data validation includes a review of the following components: laboratory test methods, laboratory data completeness, documentation of holding time(s), chain(s) of custody, and quality assurance/quality control (QA/QC) data.

To confirm the validity of your data, you may use Ohio EPA's tier 1 data validation plan review form, which can be obtained from Ohio EPA's web page:  
[http://www.epa.state.oh.us/dhwm/tier\\_1\\_data\\_validation\\_manual.html](http://www.epa.state.oh.us/dhwm/tier_1_data_validation_manual.html). Ohio EPA may request the documentation needed to confirm the validity of the data submitted.

Please submit, with your laboratory data, a brief narrative of each sampling event which includes: process generating the waste, point in the process the sample was obtained, sampling techniques used to obtain the sample and a description of how this sample was determined to be a representative sample of the waste tested.

As a used oil generator you are required to: store used oil in containers or aboveground tanks that are in good condition (no severe rusting, apparent structural defects or deterioration) and not leaking. These containers or aboveground tanks must be labeled with the words "Used Oil." If leaks are detected, the generator must: stop the release; contain the release; clean up and manage properly the released used oil and other materials related to the release; and, if necessary, repair or replace any leaking containers or tanks prior to returning them to service. As a generator, M&W must use a transporter with an EPA ID# to transport its used oil to a proper recycling facility.

You may be able to reduce the waste your company generates. If you find ways to recycle, reduce or altogether eliminate the amount of waste that your company generates, you may be able to reduce your treatment and disposal costs and you may possibly reduce your regulatory requirements. You may want to consider the opportunity to have a pollution prevention assessment at your facility. I encourage you to schedule an assessment because there are often many opportunities for businesses to reduce waste and save money. Please feel free to contact Ohio EPA's Office of Compliance Assistance and Pollution Prevention at (614)644-3469 about your interest in an assessment.

Please be aware that incandescent, fluorescent, metal halide, neon, high-intensity discharge, high-pressure sodium and mercury-vapor lamps could be hazardous waste when discarded. **Do not place hazardous waste lamps in the trash.** Fluorescent lamps may contain up to 40 milligrams (mg) of mercury, depending on the brand and manufacturer. Lamps may also contain lead and cadmium. Many lamps exhibit a characteristic of toxicity for heavy metals when disposed. Ohio EPA may assess your compliance with these rules during a future inspection.

The Division of Hazardous Waste Management has created an electronic news service to provide you with quick and timely updates on events and news related to hazardous waste activities in Ohio. If you haven't already, we encourage you to sign up for this free service. You can find more information at the following web link: [www.epa.state.oh.us/dhwm/listserv.html](http://www.epa.state.oh.us/dhwm/listserv.html). Please feel free to share this information with your colleagues.

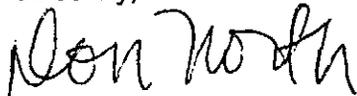
Please note that Ohio EPA considers your failure to respond and these violations to be serious in nature. As such, M&W may be referred to our Central Office Enforcement Section for consideration of escalated enforcement.

If you have any questions or comments, please contact me immediately at (419) 373-3074.

Mr. G. P. Bell, VP Operations  
July 20, 2007  
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You can find copies of the rules and other information on the division's web page at [www.epa.state.oh.us/dhwm](http://www.epa.state.oh.us/dhwm). Ohio EPA also has helpful information about pollution prevention at [www.epa.state.oh.us/opp](http://www.epa.state.oh.us/opp).

Sincerely,



Don North  
District Representative  
Division of Hazardous Waste Management

/lr

Enclosures

pc: Colleen Weaver, DHWM, NWDO  
Cindy Lohrbach, DHWM, NWDO  
DHWM, NWDO, Maumee & Western RR, Defiance & Paulding County Files  
ec: Don North, DHWM, NWDO

**NOTICE:** Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with all applicable regulations.

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 City, State, ZIP+4 Connersville IN 47331  
 PS Form 3800, August 2006 See Reverse for Instructions

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 Connersville, IN 47331

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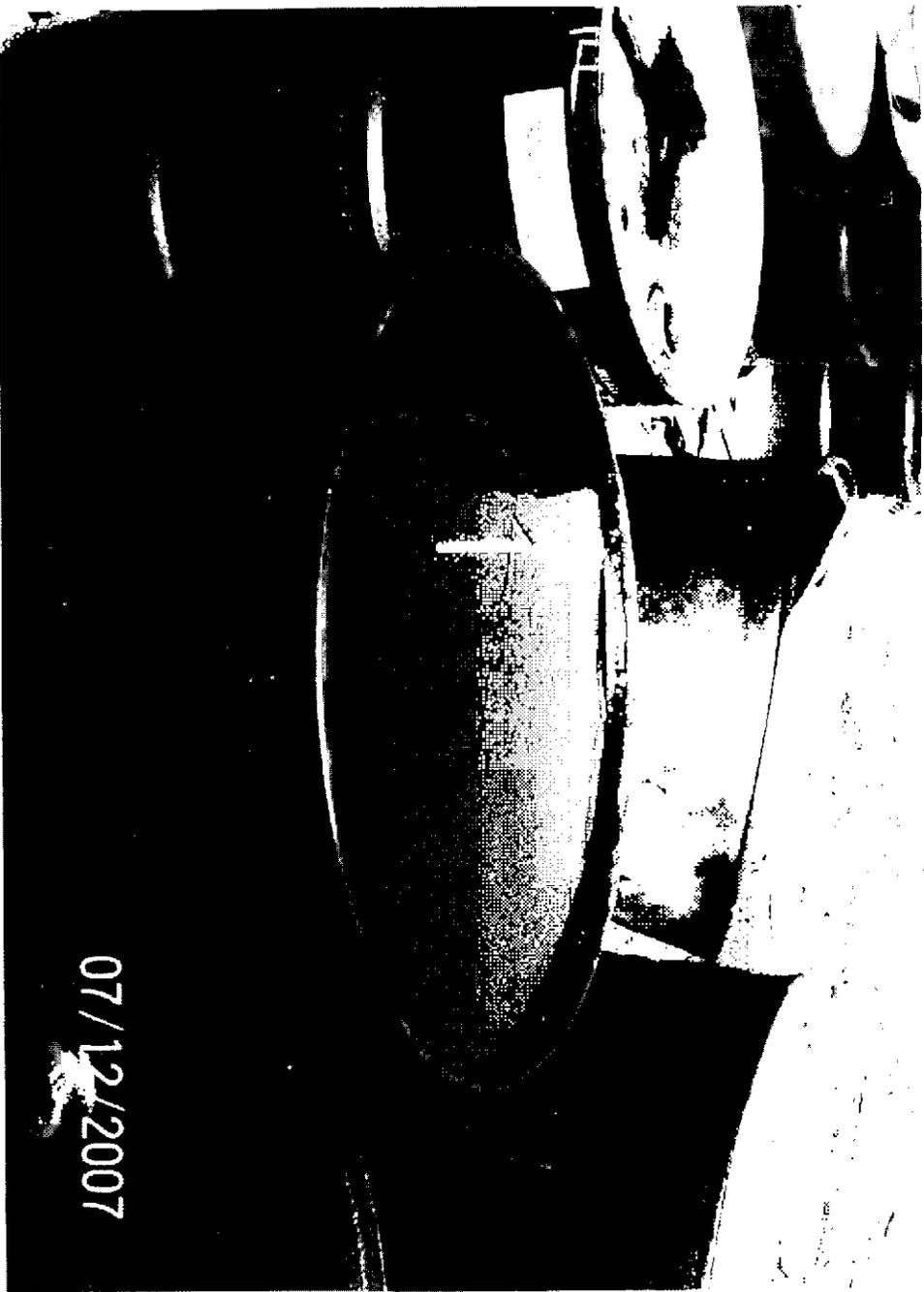
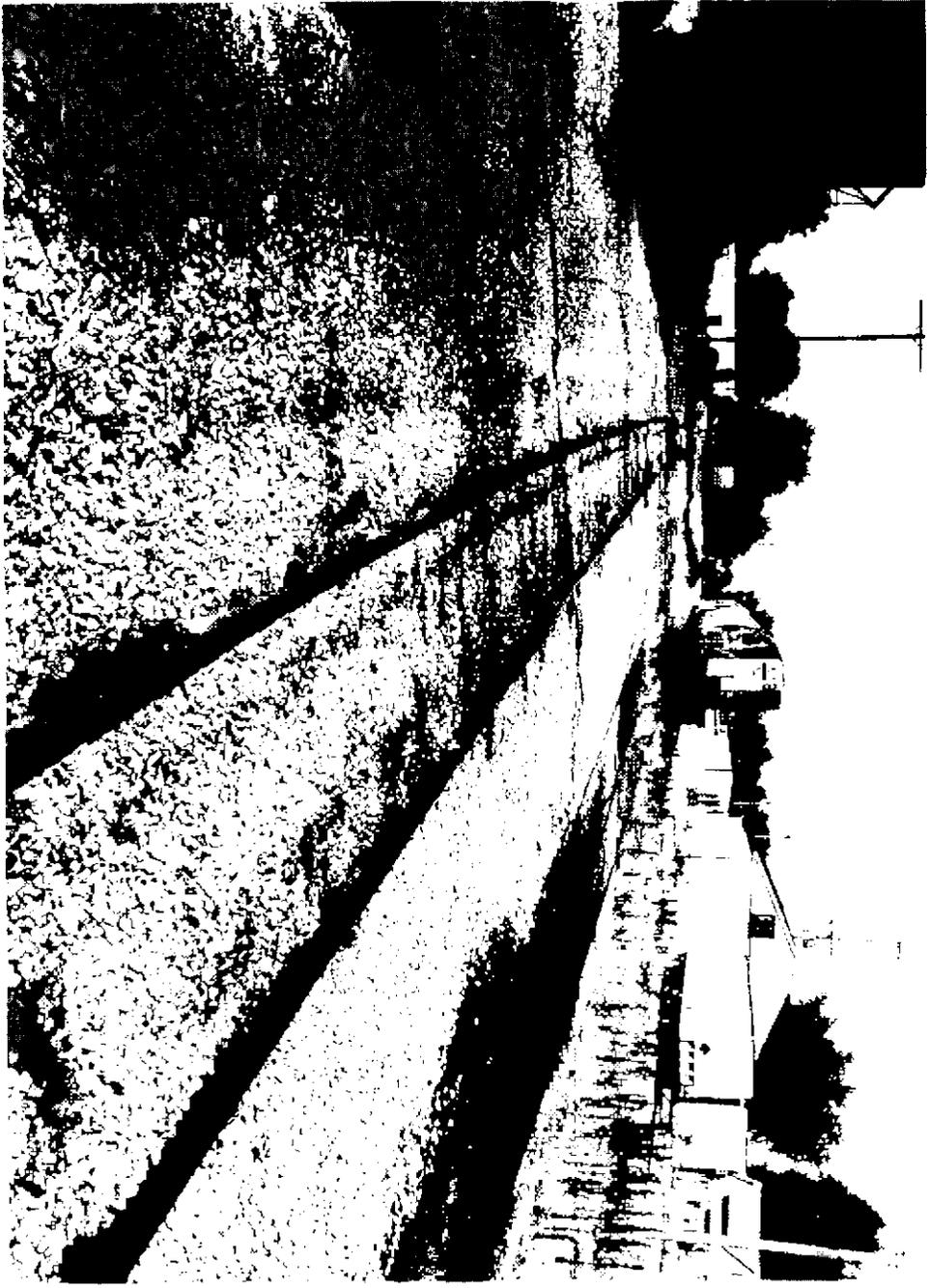
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