



State of Ohio Environmental Protection Agency

Northwest District Office

347 North Dunbridge Road
Bowling Green, OH 43402-9398

TELE: (419) 352-8461 FAX: (419) 352-8468
www.epa.state.oh.us

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

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

February 1, 2008

CERTIFIED MAIL

7006 0100 0003 7708 5701

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

Dear Mr. Bell:

On November 19 and 20, 2007, I observed and photographed the sampling that was performed by TTL Associates, Inc. (TTL) at your Defiance and Antwerp facilities. You were present on November 19, 2007, at the Defiance facility. On December 3, 2007, I received a copy of the analytical report from Ben Patterson of TTL.

On November 19, 2007, we observed twenty-eight (28) 55-gallon drums of waste and some waste pails outside the rail car, on pallets on the ground, and five (5) 55-gallon drums of waste inside the rail car at the Defiance facility. Also at the Defiance facility were six (6) soil piles. On November 20, 2007, we observed five (5) 55-gallon drums of waste and one 5-gallon pail of waste at the Antwerp facility. The following table lists significant information about the drums and soil piles that were sampled by TTL, on November 19 and 20, 2007:

Drum Number	Drum Condition	Waste Type	Results
Drum 1 Top Layer Defiance	55-gallon Closed.	Black oil 3 inches or less. (Mixture)	Hazardous Waste D008 TCLP Lead 9.9 mg/L (TCLP Chromium 3.1 mg/L)
Drum 1 Bottom Layer		50 gallons of antifreeze. (Mixture)	Non-hazardous

Drum 2 Top Layer Defiance	55-gallon Closed.	Black oil 3 inches or less. (Mixture)	Hazardous Waste D008 TCLP Lead 8.2 mg/L (TCLP Chromium 2.7 mg/L) (TCLP Cadmium 0.25 mg/L)
Drum 2 Bottom Layer		50 gallons water. (Mixture)	Non-hazardous
Drum 9 Defiance	55-gallon Closed. Drum leaking at bottom.	4 inches clear yellowish liquid	Non-hazardous
Drum 12 Defiance	55-gallon	4 inches clear liquid on top and 2 inches of reddish brown and white sludge on bottom.	Non-hazardous
Drum 13 Defiance	55-gallon	1/3 full. 12 inches clear liquid on top and 2 inches thick brown sludge on bottom.	Non-hazardous (TCLP Lead 1.1 mg/L) (TCLP Chromium 1.3 mg/L) DUP 2 (TCLP Lead 3.1 mg/L) (TCLP Chromium 1.4 mg/L) Source of lead and chromium not identified.
Drum 16 Defiance	55-gallon Closed.	10 inches yellow liquid.	Hazardous Waste D018 TCLP Benzene 47 mg/L (Fl. Pt. 140°F) (TCLP Chromium 1.4 mg/L) Contaminated.
Drum 24 Defiance	55-gallon	Full. 1 inch cream sludge on top and antifreeze on bottom. Almost exclusively antifreeze.	Non-hazardous (TCLP Lead 3.6 mg/L) Layer containing lead not identified.
Drum 31 Defiance Inside Rail Car	55-gallon	Full. 1/2 inch brown and white sludge on top and green antifreeze on bottom.	Non-hazardous
Soil Pile 1 Defiance Yard			Non-hazardous
Soil Pile 2 Defiance Yard			Non-hazardous Dup Non-hazardous

Soil Pile 3 Defiance Yard			Non-hazardous
Waste Pile 1 Defiance Down-rail			Non-hazardous
Waste Pile-2A Defiance Down-rail			Non-hazardous
Waste Pile-2B Defiance Down-rail			Non-hazardous
Waste Pile-3A Defiance Down-rail			Non-hazardous
Waste Pile-3B Defiance Down-rail			Non-hazardous
Drum A-3 Top Layer Antwerp	55-gallon Full. Closed.	1 inch of black oil on top. (Mixture)	Non-hazardous (TCLP Lead 2.1 mg/L)
Drum A-3 Bottom Layer Antwerp		50 + gallons of antifreeze on bottom. (Mixture)	Non-hazardous
Drum A-4 Top Layer Antwerp	55-gallon Full. Closed.	Black oil. Solvent odor. (75% of Mixture)	Hazardous Waste D018, F001 & D039 TCLP Benzene 5.8 mg/L TCLP Tetrachloroethylene 150 mg/L (TCLP Lead 3.0 mg/L) (TCLP Chromium 1.2 mg/L)
Drum A-4 Bottom Layer Antwerp		Other liquid. Solvent odor. (25% of Mixture)	Non-hazardous (TCLP Tetrachloroethylene 0.28 mg/L)
Drum A-5 Top Layer Antwerp	55-gallon Full.	Thin red liquid. (80 % of Mixture)	Hazardous Waste D018 TCLP Benzene 71 mg/L
Drum A-5 Bottom Layer Antwerp		Clear liquid. (20% of Mixture)	Hazardous Waste D018 TCLP Benzene 110 mg/L

* This is a summary of information in the file. Please view the photos and notes in the file for more detail.

The analytical results from sampling performed by TTL in Defiance and Antwerp on November 19 and 20, 2007, demonstrates that hazardous waste is generated and accumulated at both the Defiance and Antwerp facilities. I have further evaluated Maumee & Western Railroad (M&W) for 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 found the following new and existing violations of Ohio's hazardous waste laws:

Since this letter includes many violations cited over a period of time, I will create a comprehensive list of all the previous violations.

FOR THE DEFIANCE FACILITY:

**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.

Ohio EPA has determined that M&W has become an unpermitted hazardous waste disposal facility for the following reasons:

- 1. During investigations on April 26, 2005, and January 5, 2006, I observed and photographed broken lead-acid batteries stored on the ground behind the rail car, where their contents were allowed to be discharged to the ground. Five were broken open.**
- 2. On July 12, 2007, I observed and photographed a broken battery dumped in a pile of solid waste in an area down the rail from the Defiance office building.**

**This hazardous waste includes the following hazardous characteristics:
Corrosivity (D002) and Lead toxicity (D008).**

On November 19, 2007, you explained that you had the broken batteries put into a drum and sent all the batteries to NorthWest Metals, Inc. and you provided a copy of an invoice from NorthWest Metals, Inc. The invoice is from June 6, 2007. Therefore, the battery observed in the solid waste pile on July 12, 2007 could not have been included in the shipment to NorthWest Metals. M&W must immediately:

- 1. 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, including this one, in compliance with Ohio's rules.**

2. Submit a closure plan that includes all the battery disposal areas, to the Director of Ohio EPA.

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 that includes all the battery disposal areas, 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. The purpose of Chapters 54 and 55 of the Administrative Code is to establish minimum standards which define the acceptable management of hazardous waste.

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 failed to adequately evaluate all of its waste. Various 55-gallon drums and 5-gallon pails of waste have been observed at the Defiance facility. These containers have been photographed and listed in other violation letters and will not be repeated here. Some of the containers were open and a few were leaking to the ground.

On November 19 and 20, 2007, TTL sampled eight of the twenty-eight 55-gallon drums at the defiance facility. The analytical results demonstrate that some of the waste is hazardous waste. (The results of the sampling and analysis are listed in the table above.) Therefore, M&W must evaluate the remaining containers of waste.

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. The complete analytical results from any sampling 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 initial hazardous waste manifest(s) signed by the transporter, and a copy of the final hazardous waste manifest 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.

To assist you in evaluating your wastes I have enclosed a copy of the document: Managing Your Hazardous Waste. I strongly urge you to review these documents carefully and contact me immediately, if you have any questions.

**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.

In order to correct this violation, M&W must remove the contaminated soil and evaluate it for hazardous characteristics. M&W should give Ohio EPA at least a five day advance notice of this decontamination activity.

**4. 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."

Ohio EPA has determined that the waste from the pollution tank would not be considered used oil, even if there is some amount of oil in it. Rather, it is a solid waste that must be evaluated to determine if it is a hazardous waste. Furthermore, according to the sample analyses it appears that the pollution tank waste is hazardous waste some of the time and then non-hazardous waste at other times and M&W may have a continuing responsibility to evaluate this waste. Most of the containers had a mixture in them and appeared to be pollution tank waste. Therefore, it is not clear which containers have only used oil in them. Ohio EPA recommends segregating the pollution tank waste from the used oil that comes from oil changes (which would be used oil). If M&W can demonstrate to Ohio EPA's satisfaction that a container of waste is used oil, the container must be labeled with the words "Used Oil" and M&W must submit to me photographs documenting their proper labeling.

FOR THE ANTWERP FACILITY:

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 storage facility by: storing hazardous waste at its Antwerp facility, without a permit, for almost three years.

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 of M&W explained that a locomotive was rebuilt after a piston broke in the engine. The containers are marked with the date of March 25, 2005. The repair company was not AM&T, it was another company. At least one of these drums contains hazardous waste.

On July 12, 2007, I observed and photographed the same drums. In addition I observed and photographed another 55-gallon drum and a 5-gallon pail of waste. This new drum and pail contains hazardous waste. They have been illegally stored by M&W. Ohio EPA had determined that the four drums of waste beside the rail in Antwerp could not be considered used oil since M&W could not demonstrate that the repair company did not use any other chemicals in the repair process. Therefore, M&W had not properly evaluated the waste and was required to do so immediately.

M&W must immediately cease unpermitted storage of its hazardous waste. M&W must provide documentation that describes the procedures that will be taken, immediately, to ensure that unpermitted storage does not happen again.

M&W must immediately ship the hazardous waste to a permitted hazardous waste treatment, storage or disposal facility and submit to me a legible copy of the initial hazardous waste manifest(s) signed by the transporter, and a copy of the final hazardous waste 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. Prior to shipping, M&W must inform Ohio EPA of the hazardous waste treatment, storage or disposal facility it intends to use and the waste codes/numbers it will designate on the hazardous waste manifest(s).

Since M&W has violated ORC Section 3734.02(E) & (F) by becoming an unpermitted storage facility (TSD) at its Antwerp facility, 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 the container storage 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 storage facility. The purpose of Chapters 54 and 55 of the Administrative Code is to establish minimum standards which define the acceptable management of hazardous waste.

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.

PAST VIOLATIONS

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 failed to adequately evaluate all of its waste. Various 55-gallon drums and a 5-gallon pail of waste have been observed at the Antwerp facility. These containers have been photographed and listed in other violation letters and will not be repeated here.

On November 20, 2007, TTL sampled three 55-gallon drums for M&W. The analytical results demonstrate that some of the waste is hazardous waste. (The results of the sampling and analysis are listed in the table above.) Not all containers of waste were sampled and analyzed. Therefore, M&W must still evaluate the remaining containers of waste (Drums 1 and 2).

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. The complete analytical results from any sampling 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.

Mr. G.P. Bell
February 1, 2008
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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.**

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 regulatory requirements. Ohio EPA has helpful information about pollution prevention at www.epa.state.oh.us/opp.

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. Please feel free to share this information with your colleagues.

Ohio EPA considers these violations and your failure to respond to and timely abate them as serious. M&W has been referred to our Central Office Enforcement Section for consideration of escalated enforcement.

If you have any questions or comments, please contact me at (419)373-3074. You can find copies of the rules and other information at www.epa.state.oh.us/dhwm.

Sincerely,



Don North
District Representative
Division of Hazardous Waste Management

/csi

Enclosure

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

ec: Don North, DHWM, NWDO
Todd Anderson, DHWM, Legal
Tammy Heffelfinger, DHWM, CO

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.

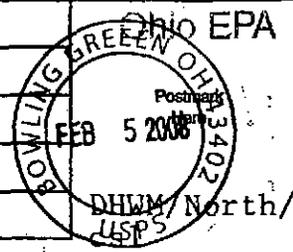
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MR GP BELL VP OPERATIONS

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<p>1. Article Addressed to:</p> <p>MR GP BELL VP OPERATIONS MAUMEE & WESTERN RAILROAD 4301 N WESTERN AVE CONNERSVILLE IN 47331</p> <p>DHWM/NORTH/CSL</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7006 0100 0003 7708 5701</p>