OhioEPA

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
Partial Return to Compliance

Certified Mail

June 17, 2008

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

Dear Mr. Bell:

I received your response to my February 1, 2008, Notice of Violation (NOV) letter, through documents submitted by TTL Associates Inc. (TTL), on April 29, 2008. The documents submitted by TTL included analytical results for containers of waste at both the Defiance and Antwerp, Ohio, facilities, a final waste determination, photographs of waste packaging and shipment, photographs of the two facilities after all waste was removed, copies of the waste profiles, and hazardous and non-hazardous waste shipping manifests. My comments, based on a review of this documentation, will be listed below under each appropriate violation. Also listed are any other requirements that Maumee & Western Railroad Corp. (M&W) must fulfill.

FOR THE DEFIANCE FACILITY:

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

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 on the north side of the rail, west of the Defiance office building.

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

TTL, on behalf of M&W, has been working with Ohio EPA to produce an approved closure plan for the two battery disposal areas. M&W must continue this process, and submit an approveable closure plan soon.

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. (If you have already done something with the battery that Ohio EPA discovered on July 12, 2007, please state what action you took.)**

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

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. Therefore, M&W must evaluate the remaining containers of waste.

M&W elected to assume that many of the drums of waste, that were not originally sampled, were hazardous waste. It was stated that this approach would cost less. This is acceptable to Ohio EPA. After reviewing all the conclusions regarding the disposal of the waste, Ohio EPA concludes that M&W has properly evaluated the waste at its two facilities. The hazardous waste manifests submitted on April 29, 2008 document that the waste has been properly disposed of. Therefore, this violation has been corrected.

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 must complete this decontamination and evaluation soon. 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.

All containers of waste have been shipped off-site, therefore, no further action regarding this violation is required at this time. If, however, there are containers of used oil in the railcar, M&W must properly label them and submit to me a photograph documenting this.

FOR THE ANTWERP FACILITY:

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

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.

After reviewing all the conclusions regarding the proper disposal of the waste, Ohio EPA concludes that M&W has properly evaluated the waste at its two facilities. The hazardous waste manifests submitted on April 29, 2008 document that the waste has been properly disposed of. M&W must submit to the Director of Ohio EPA a closure plan for the drum storage unit at the Antwerp facility.

PAST VIOLATIONS

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

   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. 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 elected to assume that the drums of waste, that were not originally sampled, were hazardous waste. It was stated that this approach would cost less. This is acceptable to Ohio EPA. After reviewing all the conclusions regarding the disposal of the waste, Ohio EPA concludes that M&W has properly evaluated the waste at its two facilities. The hazardous waste manifests submitted on April 29, 2008 document that the waste has been properly disposed of. Therefore, this violation has been corrected.

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

/lb

pc: Colleen Weaver, DHWM, NWDO
Cindy Lohrbach, DHWM, NWDO
DHWM, NWDO, Maumee & Western RR, Defiance & Paulding County Files
7006 0100 0004 1318 3477

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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Sent To: Mr G P Bell UP Operations
Street, Apt. No.; or PO Box No.: Maumee Western Railroad Corp 4301 N Western Ave
City, State, ZIP+4: Connersville Indiana 47331

PS Form 3800, June 2002 — See Reverse for Instructions

DHW - DN - 6 5

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Mr GP Bell UP Operations
Maumee Western Railroad Corp
4301 N. Western Ave
Connersville Ind
47331

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