



**Environmental  
Protection Agency**

John R. Kasich, Governor  
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**MUSKINGUM COUNTY  
GENERAL FILE  
(MAR-ZANE MATERIALS, INC.)  
DMWM/SEDO  
OHR000158758**

July 20, 2011

Mr. Christopher Jones  
Calfee, Halter & Griswold LLP  
21 East State Street  
Columbus, OH 43215-4243

Dear Mr. Jones:

As you know, on February 18, 2010, Scott Bergreen and I performed a compliance inspection of Mar-Zane Materials, Inc.'s lab to determine its compliance with Ohio's hazardous waste laws and regulations as found in Chapter 3734 of the Ohio Revised Code (ORC) and Chapter 3745 of the Ohio Administrative Code (OAC).

Based on our observations and the documentation reviewed from the inspection, notice of violation letters were sent to Mar-Zane on February 26, July 14 and July 26, 2010 regarding waste determination for the solvent/asphalt solutions from asphalt aggregate testing. I received your responses on April 7, July 23, and August 20, 2010. The August response included the TCLP sample results for the spent Powersolv waste, indicating that it is characteristically hazardous for ignitability.

On August 26, 2010, a letter was sent to Mar-Zane requesting documentation that Mar-Zane was managing these materials as hazardous wastes.

On September 28, 2010, I received Mar-Zane's response stating that the spent solvent-asphalt solutions (Powersolv and Trichloroethylene or TCE) are not wastes because they are "reintroduced" into the hot mix asphalt (HMA) process, placed on the recycled asphalt pile, or placed into a tank for use as crack repair material. After discussions with you regarding these issues, we received your letter on April 25, 2011, with modifications to those management proposals. Subsequently, Ohio EPA and Mar-Zane further discussed the options outlined in both responses. Based upon those discussions, Mar-Zane modified their management options of the secondary materials generated from the asphalt testing procedures as follows:

Powersolv

Marzane proposes to accumulate and manage the spent Powersolv-asphalt solution as an ignitable hazardous waste. Marzane will continue to explore continued use options for this secondary material and seek Ohio EPA concurrence on such uses.

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TCE

Mar-Zane reclaims the spent TCE from the asphalt testing process by distillation and subsequently returns it to use in the original process. As long as the reclaimed TCE solvent is managed as it would be as if it were the original product, i.e. stored in a closed, appropriate container pending its re-use for its original intended purpose, it would not be considered waste per OAC rule 3745-51-03(C)(2)(a).

TCE-asphalt residuals

Mar-Zane will use the TCE-asphalt residues as part of their crack filling material. The use of this material, as described in Mar-Zane's April 20, 2011 response, would not be considered use in a manner constituting disposal, but rather a material being used as a substitute for a commercial chemical product, as described in OAC rule 3745-51-02(E)(1)(b). This crack filler is topically applied to thick and existing aggregate bases. These are pre-existing, thick, multiple layers of aggregate bases which are receiving a topical layer of filler to repair cracks which have formed over time and use. Therefore, this material is not being applied to the land.

Based on this position regarding the TCE-still bottoms, Mar-Zane has abated the following remaining violation:

**(1) OAC rule 3745-52-11 Hazardous waste determination.**

If Mar-Zane develops new uses for the spent Powersolv and wishes to discuss these uses, please feel free to contact me at (740) 380-5278. Additionally, if any of the management of the TCE related materials changes, Mar-Zane and the material may become subject to additional hazardous waste regulation. If you have any additional questions, please call me at (740) 380-5278.

Sincerely,



Richard Stewart  
District Representative  
Division of Materials and Waste Management

RS/mlm

cc: Anthony Ruggiero, Mar-Zane Materials, Inc.  
Todd Anderson, Legal, 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.