



State of Ohio Environmental Protection Agency

Southwest District Office

401 E. Fifth St.
Dayton, Ohio 45402

TELE: (937) 265-6357 FAX: (937) 265-6249
www.epa.state.oh.us

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

Clinton Co
Health Dept
Ben Love.

June 11, 2009

Mr. Dan Woodgeard
8539 N US 68
Wilmington, Ohio 45177

RE: Notice of Violation- Open Dumping
Property located at 8539 N US 68, Clinton County

Dear Mr. Woodgeard:

On June 4, 2009, I representing the Ohio Environmental Protection Agency (Ohio EPA), Southwest District Office (SWDO), Division of Solid and Infectious Waste Management (DSIWM), met with you in response to a complaint of open dumping on your property located at (Parcel Number 1900054709), Liberty Township, Clinton County, Ohio. Accompanying us during the inspection was Mr. Terry Sanner representing Ohio EPA, Division of Air Pollution Control and Mr. Fred Messaros (contractor hired to do the abatement) of Messaros Demolition Inc.

The purpose of this comprehensive inspection was to determine compliance with Ohio's Solid Waste Laws and Scrap Tire Regulations, Ohio Revised Code (ORC) 3734 and Ohio Administrative Code (OAC) 3734.

Your property (Parcel Number 1900054709) is the site of open dumping of solid wastes and illegal disposal of construction and demolition debris (C&DD).

During my inspection on June 4, 2009, I observed the following:

1. Scrap tires were observed in piles and scattered on the ground at the site amongst several piles of scrap metal, miscellaneous solid waste and inoperable equipment and semi-trailers. The presence of these scrap tires on the property constitutes open dumping. Piles of miscellaneous solid wastes were also observed along the property including but not limited to fuel containers, scrap metal, automotive parts and seats, bottles, propane containers, pressurized gas containers, frames, airplane parts, and drums filled with automotive fluids. There was also a semi-trailer partially filled with food material spilling out onto the ground on the property.

Open dumping is defined under Ohio Revised Code (ORC) Section 3734.01(I), which states in part:

“Open dumping” means the depositing of solid wastes into a body or stream of water or onto the surface of the ground at a site that is not licensed as a solid waste facility under Section 3734.05 of the Revised Code.

Open dumping is also defined in Ohio Administrative Code (OAC) Rule 3745-27-01(O)(4)(b), which states in part:

“The deposition of solid wastes that consist of scrap tires into waters of the state, and also means the final deposition of scrap tires on or into the ground at any place other than a scrap tire collection, storage, monofill, monocell, or recovery facility licensed under Section 3734.81 of the Revised Code, or at a site or in a manner not specifically identified in division (C)(2), (C)(3), (C)(4), (C)(5), (C)(7), or (C)(10) of Section 3734.85 of the Revised Code, or at any licensed solid waste facility if the deposition is not in accordance with Chapters 3745-27 and 3745-37 of the Administrative Code.”

Failure to remove all solid wastes including but not limited to scrap tires dumped on the Property is a violation of ORC Section 3734.03, which states in part:

“No person shall dispose of solid wastes by open burning or open dumping...”

This is also a violation of OAC Rule 3745-27-05(C), which states in part:

“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”.

ORC Section 3734.02(C), which states in part:

“No person shall establish a solid waste facility without a permit.”
Therefore you are in violation of ORC Section 3734.02(C) for establishing a solid waste facility without a permit.

ORC Section 3745.05(A), which states in part:

“No person shall operate and maintain a solid waste facility without a license...” Therefore you are in violation of ORC Section 3745.05(A) for operating and maintaining a solid waste facility without a license.

OAC Rule 3745-37-01(A), which states in part:

“No person shall conduct municipal solid waste landfill, industrial solid waste landfill, residual solid waste landfill, compost facility, transfer facility, infectious waste treatment facility, or solid waste incineration facility operations without possessing a separate, valid license for each such operation, as required by Chapter 3734. of the Revised Code and the Administrative Code rules adopted thereunder...” Therefore you are in violation of OAC Rule 3745-37-01(A) for conducting operations without a valid license.

2. Several drums were located on the property containing motor vehicle fluids, and unknown semi-solid materials. There are drums that are partially crushed and have leaked materials out in the semi-trailer at the rear of the site.

If the waste was generated by a business, you must comply with Ohio Administrative Code (OAC) Rule 3745-52-11. OAC Rule 3745-52-11 states, “Any person who generates a waste, as defined in 3745-51-02 of the Administrative Code, must determine if that waste is a hazardous waste.”

If the waste was generated by a household, the waste would fall outside of hazardous waste regulations. OAC Rule 3745-51-04(B) states in part, “Wastes which are not hazardous wastes. The following wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. As used in Chapter 3745-51 of the Administrative Code, “household waste” means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).”

As the owner of the property, you are responsible for determining if the waste was generated from a business or from a household. If you believe the waste was generated by a household, please provide documentation to this office supporting that claim.

However, if you are unable to substantiate the household waste claim, the waste will need to be properly characterized in accordance with OAC Rule 3745-52-11, and if the waste is determined to be hazardous, it must be

managed and disposed in accordance with applicable hazardous waste generator requirements found in OAC Chapter 3745-52.

ORC 3734.11(A), states in part:

“No person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code”. Therefore you are in violation of ORC 3734.11(A) for the aforementioned violations.

Scrap tires must be properly stored and managed in accordance with Ohio’s Scrap Tire regulations pursuant to OAC Rule 3745-27-60. The owner’s failure to properly store and manage the scrap tires is a violation of OAC Rule 3745-27-60.

Scrap tires shall be stored in accordance with OAC Rule 3745-27-60(B)(3), which states in part:

“Where a single portable container, truck, or semi-trailer is used to store scrap tires, the portable scrap tire container, truck, or semi-trailer shall be located as determined by the business owner and the local fire official”.

The storage of scrap tires outside of portable containers, trucks, semi-trailers, a building or covered structure shall be managed in accordance with OAC Rule 3745-27-60(B)(7), which states in part:

“(a) Individual scrap tire storage piles shall be no greater than two thousand five hundred square feet in basal area and the total number of scrap tires shall not exceed the amount specified in paragraph (A) of rule 3745-27-61 of the Administrative Code. Scrap tire storage piles shall include any area where scrap tires are stored in racks. The two thousand five hundred square feet basal area shall apply to multiple racks and small scrap tire piles not separated from other racks, piles, or structures by a fire break at least fifty-six feet wide. The basal area of the scrap tire storage pile shall include the area of the tire piles, racks, and the area of any walkway or other open areas that do not meet the definition of a fire break as defined in rule 3745-27-01 of the Administrative Code.

(b) Scrap tire storage piles shall not exceed eight feet in height.

(c) Scrap tire storage piles of five hundred scrap tires or less shall be at least twenty-five feet away from all buildings and other scrap tire storage piles.

(d) Scrap tire storage piles of more than five hundred scrap tires including single or multiple racks containing a total of more than five hundred scrap tires shall be separated from other scrap tire storage piles and from buildings and structures by a fire break with a width equal to or greater

than fifty-six feet in accordance with the fire break chart in appendix I to rule 3745-27-65 of the Administrative Code.

(e) Sufficient fire breaks shall be maintained to allow access of emergency vehicles at all times to, around, and between the scrap tire storage piles and areas".

3. Several scrap tires on the property were observed to have water collecting in them.

The improper storage and handling of scrap tires on the property is a violation of OAC Rule 3745-27-60(B)(1), which states in part:

"The storage of scrap tires in any amount outside or inside a trailer, vehicle, or building shall be deemed a nuisance, a hazard to public health or safety, or fire hazard unless the tires are stored in accordance with the following standards:

Sufficient drainage shall be maintained such that water does not collect in the area where scrap tires are stored."

The owners failure to keep the tires free of water is also a violation of OAC 3745-27-60(C)(1)(b) which states in part:

"Store scrap tires such that water does not accumulate in scrap tires or containers. Tires shall be kept free of water at all time."

4. During the inspection I observed scattered scrap tire piles, each pile ranging from seventy-five (75) scrap tires to a hundred (100) located on the west property boundary. Small piles consisting of approximately ten (10) to forty (40) scrap tires are scattered throughout the property.

Failure to properly store the scrap tires that remain on site is a violation of OAC Rule 3745-27-60(B)(7)(c), which states in part:

"Scrap tire storage piles of five hundred scrap tires or less shall be at least twenty-five feet away from all buildings and other scrap tire storage piles."

Combustible material including wood, weeds and tree debris, was present in and around the piles of scrap tires on the property. This is a violation of OAC Rule 3745-27-60(B)(11), which states in part:

"Fire breaks shall be maintained to be free of all combustible material including but not limited to weeds, leaves and debris. Fire breaks may include well mowed grass if the fire break also include a gravel or paved fire lane at least twenty-five feet wide"

The owner's failure to provide sufficient fire breaks around that the tires is also a violation of OAC Rule 3745-27-60(B)(7)(e) which states in part:

“Sufficient fire breaks shall be maintained to allow access of emergency vehicles at all times to, around and between the scrap tire storage piles and areas.”

As a reminder, the scrap tires can only be hauled by a registered scrap tire transporter (see attached list) in accordance with OAC Rule 3745-27-54(A)(1) which states:

“Any person transporting scrap tires in Ohio shall comply with the registration requirements of this rule; with the standards for transportation of scrap tires in rule 3745-27-56 of the Administrative Code, and with the use of shipping papers in rule 3745-27-57 of the Administrative Code. Specific exclusions in paragraph (A)(2) of this rule apply only to the requirement to register as a scrap tire transporter and do not exclude anyone from the requirement to comply with the standards for transportation of scrap tires and the use of shipping papers.”

Improper storage of scrap tires poses several potential problems for the local residents, environment, and the emergency crews in the area. Scrap tires provide an optimal breeding ground for mosquitoes. Mosquitoes identified at tire piles in Ohio can carry St. Louis Encephalitis, La Crosse Encephalitis, Yellow fever, Dengue Fever and West Nile Virus.

The above violations of the ORC, and OAC, constitute a violation of ORC 3734.11(A) which states:

“No person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code.”

The Ohio Administrative Code (OAC) and the Ohio Revised Code (ORC) specifically prohibit open dumping of solid wastes and illegal disposal of scrap tires.

- This NOV letter serves to inform you that **the solid wastes and scrap tires on your property must be removed** (e.g., solid waste in a licensed sanitary landfill and scrap tires at a licensed scrap tire disposal facility) and **must be taken to a licensed facility for proper disposal.**
- Please determine if there is regulated asbestos onsite and properly dispose.
- Please characterize and properly dispose of all drummed waste and chemicals onsite in accordance with Ohio's Hazardous Waste Regulations
- **Please provide, at a minimum, a time frame for removal of all debris and an action plan for the removal. The plan must also contain the location of the licensed facility where debris will be taken for proper disposal.**

The plan must also contain milestones projecting completion of work by day and/or week.

- **Receipts documenting proper disposal must be submitted to Ohio EPA, Southwest District Office (SWDO), Division of Solid and Infectious Waste Management (DSIWM) at the letterhead address.**
- **A re-inspection will be scheduled to verify that the clean-up is complete to document your return to compliance with Ohio Law.**

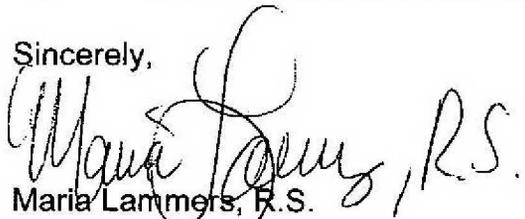
Please respond in writing within seven (7) days of receipt of this correspondence regarding your remedy and implementation schedule in regards to the aforementioned violations. Failure to comply with this Notice of Violation will result in escalated enforcement.

Compliance with the requirements outlined in this letter shall not relieve you of your obligation to comply with other legal obligations, including, but not limited to, Chapters 3704, 3714, 3734, or 6111 of the Ohio Revised Code or under the Federal Clean Water Act, Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act, or Resource Conservation and Recovery Act remedying conditions resulting from any release of contaminants to the environment.

As such, corrections of the violations cited herein are expected to begin immediately. Mr. Messaros indicated that a work plan would be developed and submitted to Ohio EPA within the following week.

If you have any questions, please contact me at (937) 285-6046.

Sincerely,



Maria Lammers, R.S.
Environmental Specialist II
Division of Solid and Infectious Waste Management

Enclosures: Ohio EPA's Registered Scrap Tire Transporter List
Ohio EPA's Registered Scrap Tire Facility List
Ohio EPA's Licensed Solid Waste Facility List

Ec: Matt Johannes, Clinton County Health Department w/o enclosures
Mr. Fred Massaros w/o enclosures

