



State of Ohio Environmental Protection Agency

Northeast District Office

2110 East Aurora Rd.  
Twinsburg, Ohio 44087

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www.epa.state.oh.us

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

May 2, 2007

**RE: NOTICE OF VIOLATION  
COMPLAINT INVESTIGATION  
COLUMBIANA COUNTY**

Mr. Glen Whiteleather  
8208 Bayard Road  
Minerva, Ohio 44657

Dear Mr. Whiteleather:

On April 16, 2007, I conducted an inspection of your property, located at 8208 Bayard Road, West Township, Columbiana County, Ohio, in response to a complaint which alleged that regulated waste materials were being open dumped at that location. Upon arriving at your property, I met with you to explain why I was there. Thank you for taking the time to show me your operations, and specifically, the areas where you have been bringing in fill materials.

The fill materials that I observed consisted of brick, concrete, block, tile, some soil and gravel, and in one pile some dimensional lumber. You informed me during the inspection that all of the fill materials that we observed on your property had come from Aluminum One in Minerva, and that Mike Peoples was your contact there. I will be working with the Division of Hazardous Waste Management here in the Northeast District Office to determine if the materials observed on your property were subject to any regulations by that division at their source.

The first area we observed was located immediately behind a maintenance building where you are increasing the grade of the existing land in order to create an area for the purpose of expanding the building. The second area we observed was along the railroad tracks where you have stockpiled fill for future use. It was in this area where I observed dimensional lumber mixed in with the loads of brick and concrete.

At the conclusion of the inspection, it was determined that the following violations existed:

1. **Illegal Disposal of Construction and Demolition Debris (C&DD).** During the inspection, brick, concrete, block, tile, some soil and gravel, and dimensional lumber were observed both disposed and stockpiled on this property.

"Construction and demolition debris" or "debris" means those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways. "Construction and demolition debris"



does not include materials identified or listed as solid wastes, infectious wastes, or hazardous wastes pursuant to Chapter 3734. of the Revised Code and rules adopted under it; or materials from mining operations, nontoxic fly ash, spent nontoxic foundry sand, slag; or reinforced or nonreinforced concrete, asphalt, building or paving brick, or building or paving stone *that is stored for a period of less than two years for recycling into a usable construction material*. "Materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure" are those structural and functional materials comprising the structure and surrounding site improvements such as brick, concrete, and other masonry materials, stone, glass, wall coverings, plaster, drywall, framing and finishing lumber, roofing materials, plumbing fixtures, heating equipment, electrical wiring and components containing no hazardous fluids or refrigerants, insulation, wall-to-wall carpeting, asphaltic substances, metals incidental to any of the above, and weathered railroad ties and utility poles.

The disposal of C&DD on your property is a violation of the following:

- a. **Ohio Administrative Code (OAC) Rule 3745-400-04(A)**: *"Construction and demolition debris shall be disposed of only by the following methods or combination thereof:*
  - (1)** *Disposal in a licensed construction and demolition debris facility.*
  - (2)** *Disposal in a solid waste disposal facility, as defined in rule 3745-27-01 of the Administrative Code and licensed in accordance with Chapter 3745-37 of the Administrative Code.*
  - (3)** *Disposal by means of open burning, as defined in Chapter 3745-19 of the Administrative Code, if permitted as provided therein.*
  - (4)** *Other methods not prohibited by Chapter 3745-400 of the Administrative Code, provided that such methods are demonstrated to the satisfaction of the licensing authority to be capable of disposing of construction and demolition debris without creating a nuisance or a health hazard, without causing water pollution, and without violating these regulations and any regulation adopted by the director pursuant to Chapters 3704. (air pollution) and 3734. (solid and hazardous wastes) of the Revised Code.*
- b. **OAC Rule 3745-400-04(B)**: *"No person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code."*

In order to return to compliance with these rules, you must immediately remove and properly dispose of the dimensional lumber arriving at your property with loads of brick, concrete, block, tile, some soil and gravel. Additionally, any loads of brick, concrete, block, tile, some soil and gravel which you bring to your property for use as clean hard fill must not contain dimensional lumber, or any other construction and demolition debris, as defined above, and they must comply with the requirements outlined in violation number 2, below.

2. **Clean Hard Fill.** During the inspection, brick, concrete, block, tile, some soil and gravel, and dimensional lumber were observed both disposed and stockpiled on this property.

"Clean hard fill" means construction and demolition debris which consists only of reinforced or nonreinforced concrete, asphalt concrete, brick, block, tile, and/or stone which can be reutilized as construction material. Brick in clean hard fill includes but is not limited to refractory brick and mortar. Clean hard fill does not include materials contaminated with hazardous wastes, solid wastes, or infectious wastes.

The disposal of clean hard fill on your property without providing the required notification to Ohio EPA is a violation of the following:

- a. **Ohio Revised Code (ORC) Section 3714.13, Division F:** *"No person shall knowingly place or cause to be placed any reinforced or nonreinforced concrete, asphalt, clay tile, building or paving brick, or building or paving stone resulting from the alteration, construction, destruction, rehabilitation, or repair of any physical structure that is built by humans as fill material on or in any land owned, leased, or controlled by the person, other than on the site where the materials were so generated or removed without providing written notice to the...director of environmental protection at least seven days prior to the first placement of any such materials as fill material at the off-site location."*
- b. **OAC Rule 3745-400-05(C):** *"The person responsible for causing clean hard fill to be used in legitimate fill operations for construction purposes or to bring the site up to a consistent grade, on a site other than the site of generation, shall provide a written "Notice of Intent to Fill" to each licensing authority where the clean hard fill is to be placed. The Notice of Intent to Fill shall state the nature of the full material, the site(s) to be filled, when filling will begin and end, and the telephone number of the notifier. The notification shall be received by each local licensing authority with sites to be filled, at least seven days prior to filling as required by division (F) of section 3714.13"*

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*of the Revised Code. The notifier shall provide a new Notice of Intent to Fill if there are any changes in the information required by this rule for notification."*

In order to return to compliance with this statute and rule, you must immediately provide the required information for any clean hard fill which you have received and are utilizing in the rear of your maintenance building, or are storing for future use along the railroad tracks on the lower portion of your property. You must also provide the required information for any clean hard fill you anticipate receiving in the future. The Notice of Intent to Fill must be received at least seven days prior to its placement in order to be in compliance with this statute and rule. In the case of Columbiana County, Ohio EPA is the licensing authority, and the notice can be sent to my attention at the following address:

Jerry W. Weber  
Ohio EPA Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087

As previously discussed, the Notice of Intent to Fill shall include the following information:

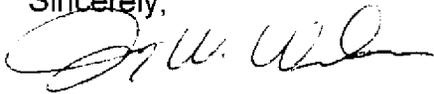
- The type and nature of the fill material to be utilized
- The specific site or address where the material was generated or removed from
- The specific site or address where the material will be used as fill
- The exact date when filling will begin
- The exact date when filling will end
- The name and telephone number of the person making the notification

For your convenience, I have enclosed with this letter Ohio's rules regarding the use and placement of Clean Hard Fill in legitimate fill operations. I have also enclosed an Ohio EPA Fact Sheet which further explains the Clean Hard Fill rules. Please read the enclosed documents carefully and follow the guidelines contained within them if you intend to continue to utilize Clean Hard Fill to change the grade on your property. If you have any questions regarding this matter after reading these documents, please feel free to call me at (330) 963-1274, or e-mail me at "[jerry.weber@epa.state.oh.us](mailto:jerry.weber@epa.state.oh.us)".

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Nothing in this letter shall be construed to authorize any waiver from any requirements of any applicable state or federal laws or regulations. This letter shall not be interpreted to release you, or others, from responsibility under Chapters 3704., 3714., 3734., or 6111. of the Ohio Revised Code, the Federal Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substance Control Act or the Comprehensive Environmental Response, Compensation and Liability Act, or from other applicable requirements for remedying conditions resulting from any release of contaminants from the facility to the environment.

Sincerely,



Jerry W. Weber, R.S.  
Environmental Specialist  
Division of Solid and Infectious Waste Management

JWW:cl  
Enclosure

cc: File: [Tukel/COUN/Columbiana County/GEN/15]