



State of Ohio Environmental Protection Agency

**Northeast District Office**

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Twinsburg, Ohio 44087

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

August 21, 2007

**RE: NOTICE OF VIOLATION  
EMPIRE EXCAVATING**

**CERTIFIED MAIL**

Upon This Rock Inc.  
13526 State Route 7  
Lisbon, Ohio 44432

George Casey  
Empire Environmental, Inc.  
1019 U.S. Route 30 West  
Imperial, PA 15126

Mr. Ray Nicolette  
Empire Excavating  
State Route 7  
Elk Run, Ohio 44415

Dear Mr. Nicolette and Mr. Casey:

On July 26, 2007, Ohio Environmental Protection Agency (Ohio EPA) inspected Empire Excavating (Empire) located at 13526 State Route 7, Lisbon, in Columbia County. This letter provides notice of violations and comments identified by Ohio EPA during the inspection.

The purpose of the inspection was to investigate the property for open dumping of solid wastes and debris because the entrance sign reads "Transfer Station" and "Dump Here." Present for this inspection were Bob and Bruce Smith, representing Empire; and Colum McKenna and I, representing Ohio EPA, Division of Solid and Infectious Waste Management. This location and/or facility is not permitted or licensed by Ohio EPA as a solid waste transfer facility as defined in Ohio Administrative Code (OAC) 3745-27-01(S)(29) nor a construction and demolition debris (CDD) disposal facility as defined in OAC 3745-400-01(G).

At Empire, Ohio EPA observed the following:

1. at least two piles containing a mixture CDD and solid waste;
2. CDD landfill near the unloading area and along south side of property;
3. open burning area containing yard waste, scrap lumber and ashes;
4. approximately 50 scrap tires, most were under a tarp;
5. pile of wood pallets;
6. roll-off box containing scrap metals; and

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7. at least five semi-trailers.

## **VIOLATIONS**

### **1. OAC 3745-400-04(B) Illegal disposal of CDD**

This rule states in part, “. . . *No person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code . . .*”

The CDD landfill is next to the unloading area and along the south side of the property. The surface of the landfill contained clean hard floor soil, dimensional lumber, carpet, floor tiles, plastic molding, foam, fabric, and metal debris.

To achieve compliance, Empire must remove and properly dispose of all CDD at a licensed CDD facility. Please provide copies of all disposal receipts to Ohio EPA within 15 days of receipt of this letter.

### **2. OAC 3745-37-01(C) License for a CDD facility**

This rule states in part, “*No person shall establish, modify, operate or maintain a construction and demolition debris facility without a construction and demolition debris facility license . . .*”

Ohio EPA observed routine disposal activity at this property. This location has a street sign advertising for waste disposal. Empire is operating an unlicensed CDD landfill.

Empire must immediately cease accepting CDD for on-site disposal and remove and properly dispose of all CDD at a licensed CDD or solid waste disposal facility and provide copies of the disposal receipts to Ohio EPA.

### **3. OAC 3745-27-05(C) Open dumping of solid wastes**

This rule states in part, “*No person shall conduct, permit, or allow open dumping.*”

Ohio EPA also observed the following solid wastes disposed on site: blue granules (Bruce Smith indicated the blue granules were used for dust control), plastic debris and clothing. Therefore, Empire has open dumped solid wastes.

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To achieve compliance, Empire must remove and properly dispose of all solid wastes at a licensed solid waste disposal facility and provide copies of the disposal receipts to Ohio EPA within 15 days receipt of this letter.

**4. Ohio Revised Code (ORC) 3734.03** Open dumping of solid wastes

This law states in part, *"No person shall dispose of solid wastes by open burning or open dumping...No person shall dispose of treated or untreated infectious waste by open burning or open dumping."*

To achieve compliance, Empire must remove and properly dispose of all solid wastes at a licensed solid waste disposal facility and provide copies of the disposal receipts to Ohio EPA within 15 days receipt of this letter.

**5. OAC 3745-37-01(A)** License for a solid waste transfer facility

This rule 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. Each license shall be obtained from the board of health in the health district in which the facility is located, or by the director, if the director has assumed the licensing function for that health district."*

Empire does not have a permit and license to operate a solid waste transfer facility.

During the inspection, Ohio EPA observed a significant amount of solid waste, including, but not limited to:

- \* numerous advertising brochures, small refrigerator and stove, pop bottles, flower pots, plastic laundry basket, eroded unidentifiable debris, and plastic containers at the unloading area;
- \* stuffed chair, mattresses, furniture, and buckets on a gravel surface near the unloading area;
- \* yard waste and scrap lumber at an open burning area;
- \* approximately 50 scrap tires along the entrance driveway; and
- \* two large metal storage tanks and metal pipes on the landfill.

Empire has violated the above rule by not obtaining a license prior to operating a solid waste transfer facility. Empire was operating as an illegal solid waste transfer facility because solid waste was on the driveway and ground surface. Pursuant to

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OAC 3745-27-03(A)(11), Empire may handle an aggregate volume of fifty cubic yards or less of incidental solid wastes. However, the solid wastes cannot be placed on the driveway or ground surface.

OAC 3745-27-03 is regarding facilities that are exempt from the requirement of a solid waste license. **OAC 3745-27-03(A)(11)** states in part, "Chapters 3745-27, 3745-29, 3745-30 and 3745-37 of the Administrative Code shall not apply to the following . . . Facilities used for the transfer of solid wastes, other than scrap tires, that consist solely of portable containers and that have an **aggregate volume of fifty cubic yards or less**. The waste **must not be placed on the ground or waste handling floor**. These facilities are still subject to paragraph (a)(2) of this rule.

*For the purposes of this rule, 'aggregate volume' is the total volume of all portable containers at a facility designated for receiving solid wastes. The total volume of containers at a facility does not include the volume of an empty portable container being delivered to a facility by a transport vehicle, whose purpose includes removal of a full or partially full container of equal or greater volume, at the time of delivery of the empty container."*

To achieve compliance, Empire must immediately cease operating as a solid waste transfer facility.

#### **ORC 3734.05(A)(1)** License for solid waste facility

This law states in part, "Except as provided in divisions (A)(4), (8) and (9) of this section, no person shall operate or maintain a solid waste facility without a license issued under this division by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code."

Empire has violated the above law for failure to obtain a license prior to operating a solid waste facility.

#### 6. **ORC 3734.05(A)(2)** Permit for a solid waste facility

This law states in part, "Except as provided in divisions (A)(2)(b), (8) and (9) of this section, each person proposing to open a new solid waste facility or to modify an existing solid waste facility shall submit an application for a permit with

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*accompanying detail plans and specifications to the environmental protection agency for required approval under the rules adopted by the director pursuant to division (A) of section 3734.02 of the Revised Code and applicable rules adopted under division (D) of section 3734.12 of the Revised Code at least two hundred seventy days before proposed operation of the facility and shall concurrently make application for the issuance of a license under division (A)(1) of this section with the board of health of the health district in which the proposed facility is to be located."*

**7. ORC 3734.02(C) Permit for a solid waste facility**

*This law states in part, ". . . Except as provided in this division and divisions (N)(2) and (3) of this section, no person shall establish a new solid waste facility or infectious waste treatment facility, or modify an existing solid waste facility or infectious waste treatment facility, without submitting an application for a permit with accompanying detail plans, specifications, and information regarding the facility and method of operation and receiving a permit issued by the director.."*

Only a permitted and licensed facility can accept solid wastes. Empire has violated the above law since they did not obtain a permit prior to establishing a solid waste facility.

**8. OAC 3745-37-01(A) License for a solid waste transfer facility**

*This rule 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. Each license shall be obtained from the board of health in the health district in which the facility is located, or by the director, if the director has assumed the licensing function for that health district."*

Empire does not have a permit and license to operate a solid waste transfer station.

There was a significant amount of solid waste, including:

- \* numerous advertising brochures, small refrigerator and stove, pop bottles, flower pots, plastic laundry basket, eroded unidentifiable debris, and plastic containers at the unloading area;
- \* stuffed chair, mattresses, furniture, and buckets on a gravel surface near the unloading area;
- \* yard waste and scrap lumber at the open burning area;

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- \* approximately 50 scrap tires along the entrance driveway and
- \* two large metal storage tanks and metal pipes on the lawn.

Empire has violated the above rule by not obtaining a license prior to operating a solid waste transfer facility. Empire was operating as an illegal solid waste transfer facility because solid waste was on the driveway and ground surface. Empire may handle an aggregate volume of fifty cubic yards or less of incidental solid wastes. However, the solid wastes cannot be placed on the driveway or ground surface.

OAC 3745-27-03 is regarding facilities that are exempt from the requirement of a solid waste license. **OAC 3745-27-03(A)(11)** states in part, "Chapters 3745-27, 3745-29, 3745-30 and 3745-37 of the Administrative Code shall not apply to the following . . . Facilities used for the transfer of solid wastes, other than scrap tires, that consist solely of portable containers and that have **an aggregate volume of fifty cubic yards or less. The waste must not be placed on the ground or waste handling floor.** These facilities are still subject to paragraph (a)(2) of this rule.

*For the purposes of this rule, 'aggregate volume' is the total volume of all portable containers at a facility designated for receiving solid wastes. The total volume of containers at a facility does not include the volume of an empty portable container being delivered to a facility by a transport vehicle, whose purpose includes removal of a full or partially full container of equal or greater volume, at the time of delivery of the empty container."*

To achieve compliance, Empire must immediately stop operating as a solid waste transfer facility.

**9. Ohio Revised Code (ORC) 6111.04(A) Polluting surface water without a permit.**

The law states in part,

- "(1) No person shall cause pollution or place or cause to be placed any sewage, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.*
- (2) Such an action prohibited under division (A)(1) of this section is hereby declared to be a public nuisance.*

*Divisions (A)(1) and (2) of this section do not apply if the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds*

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*a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in sections 6111.01 to 6111.08 of the Revised Code or if the person's application for renewal of such a permit is pending."*

During the inspection, Ohio EPA observed surface water flowing from the northeast part of the property, then onto the concrete tipping floor that contained dumped CDD and solid wastes. The drainage then flowed along the south side and out towards Route 7 and off the property.

Surface water in contact with solid wastes and/or CDD creates leachate. Empire is in violation of ORC 6111.04 for allowing leachate to enter waters of the state without a permit issued by Ohio EPA. Empire must immediately cease discharging leachate to waters of the state. This matter shall be referred to Ohio EPA's Division of Surface Water.

**10. OAC 3745-1-04** Polluting surface water

This rule is regarding criteria applicable to all waters, which states in part,

*"The following general water quality shall apply to all surface waters of the state including mixing zones. To every extent practical and possible as determined by the director, these waters shall be:*

- (A) *Free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life;*
- (B) *Free from floating debris, oil, scum and other floating materials entering the waters of the state as a result of human activity in amounts sufficient to be unsightly or cause degradation;*
- (C) *Free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance;"*

As stated above, surface water was flowing from the northeast part of the property, then onto the concrete tipping floor that contained dumped CDD and solid wastes. The drainage then flowed along the south side and out towards Route 7 and off the property.

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Surface water in contact with solid wastes and/or CDD creates leachate. Empire is in violation of OAC 3745-1-04 for allowing leachate to enter waters of the state. Empire must immediately cease discharging leachate to waters of the state.

**11. ORC 3734.03 Open burning**

This law states in part, *"No person shall of solid wastes by open burning or open dumping except as authorized by the director of environmental protection . . ."*

There was an open burning area uphill from the office/unloading area. Tree limbs, cut shrubs, and scrap wood boards were sitting on top of ashes. Partially burned scrap lumber was in the ashes. To achieve compliance, Empire must immediately cease all open burning and dispose of remains as solid waste. Please provide Ohio EPA documentation of proper disposal within 15 days of receipt of this letter.

**COMMENTS**

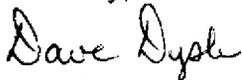
1. Records or log books were not available. Empire should keep log books available for Ohio EPA review. OAC 3745-27-03(A)(6) states in part, *"Legitimate recycling facilities, other than scrap tire recovery facilities and premises where scrap tires are beneficially used.*
  - (a) *The owner or operator of a legitimate recycling facility that also transfers solid waste seeking exemption under this rule or a legitimate recycling facility claiming exemption under this rule shall collect and maintain information sufficient to demonstrate the applicability of this exemption to their facility. The information shall:*
    - (i) *Include as at a minimum all the following:*
      - (a) *The total weight of wastes received per month.*
      - (b) *The total weight of materials recovered for beneficial use per month.*
      - (c) *The weight and disposal location of unrecoverable materials;*
    - (ii) *Be available for inspection by the director, the health commissioner, or their authorized representative upon request. Copies of information required by this rule shall be submitted to the director, the health commissioner, and/or their authorized representatives by the facility operator upon request;*



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Please provide a written response to the above violations within 15 days receipt of this letter. Please include a schedule and description of compliance activities. Should you have any questions, please call me at (330) 963-1286.

Sincerely,



Dave Dysle  
Environmental Specialist  
Division of Solid and Infectious Waste Management

DD:cl

cc: Colum McKenna, DSIWM, NEDO  
Joe Trocchio, DSW, NEDO  
Jerry Weber, DSIWM, NEDO  
Darren Machuga, DAPC, NEDO  
Robert Morehead, Columbiana County Health Department  
File: [Tukel/COUN/Columbiana/COR/15]