OhioEPA
State of Ohio Environmental Protection Agency
Northeast District Office

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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

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 allo illegal disposal of construction and demolition debris, as defined in rule 3 45-400-01 of the Administrative Code . . ."*

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

To achieve compliance, Empire must remove and properly dis se of all CDD at a licensed CDD facility. Please provide copies of all disposal re eipts 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, o rate or maintain a construction and demolition debris facility without a construc on and demolition debris facility license . . ."*

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

Empire must immediately cease accepting CDD for on-site d posal and remove and properly dispose of all CDD at a licensed CDD or solid w te 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 a w open dumping."*

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

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

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

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

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

To achieve compliance, Empire must immediately cease operatinc 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 hout a license issued under this division by the board of health of the health dis t in which the facility is located or by the director of environmental protection en the health district in which the facility is located is not on the approved li under section 3734.08 of the Revised Code."*

Empire has violated the above law for failure to obtain a license pr 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), (and (9) of this section, each person proposing to open a new solid waste facilit r to modify an existing solid waste facility shall submit an application for permit with*

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;

* approximately 50 scrap tires along the entrance drivewa and
* two large metal storage tanks and metal pipes on the lar ill.

Empire has violated the above rule by not obtaining a license p r to operating a solid waste transfer facility. Empire was operating as an illegal s d waste transfer facility because solid waste was on the driveway and ground su ce. Empire may handle an aggregate volume of fifty cubic yards or less of incid al solid wastes. However, the solid wastes cannot be placed on the driveway o ound surface.

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

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

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

9. Ohio Revised Code (ORC) 6111.04(A) Polluting surface wate ithout a permit.

The law states in part,

"(1) No person shall cause pollution or place or cause be placed any sewage, sludge materials, industrial waste, or (er wastes in a location where they cause pollution of any waters the state.

(2) Such an action prohibited under division (A)(1) this section is hereby declared to be a public nuisance.

Divisions (A)(1) and (2) of this section do not a y if the person causing pollution or placing or causing to be p ed wastes in a location in which they cause pollution of any water the state holds

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.

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;

(iii) Be maintained on the facility premises for the current year and the preceding two calendar years or the total period the facility has been in existence, if less than two years.

(b) For the purposes of this rule, the exemption for facilities that do not maintain sixty percent recovery of the solid wastes received shall expire on the last day of the fifth month in any calendar year that the sixty percent recovered weight was not achieved. . ."

2. Any temporarily stored solid waste must be stored in compliance with OAC 3745-27-03(A)(2). This rule states in part, "*The temporary storage of solid wastes, other than scrap tires, prior to collection for disposal or transfer. Such disposal or transfer shall be in accordance with Chapter 3734. of the Revised Code and rules adopted thereunder. For purposes of Chapters 3745-27 and 3745-37 of the Administrative Code, temporary storage of putrescible solid wastes in excess of seven days, or temporary storage of any solid wastes where such storage causes a nuisance or health hazard in the judgment of the health commissioner or the director or their authorized representative shall be considered open dumping.*

In addition, Chapters 3745-27 and 3745-37 of the Administrative Code shall not apply to the storage of one hundred or fewer scrap tires unless they are stored in such a manner that, in the judgment of the director or the board of health of the health district in which the scrap tires are stored, the storage causes a nuisance, a hazard to public health or safety, or a fire hazard."

Ohio EPA recommends storing any temporarily stored solid wastes in covered waterproof containers. Scrap tires are also considered solid waste. Although most of the scrap tires at Empire were covered with a tarp, approximately 10 tires were not covered. Rain water collecting in scrap tires creates breeding areas for mosquitoes. OAC 3745-27-60(B)(8) requires scrap tires to be kept dry or be treated with approved larvicides and keep records of mosquito control applications.

Nothing in this letter shall be construed to authorize any waiver from the requirements of any applicable state or federal laws or regulations. This letter shall not be interpreted to release Empire, Upon This Rock Inc. and others from responsibility under Chapters 3704, 3714, 3734, or 6111 of the Ohio Revised Code or under the Federal Clean Water or Comprehensive Environmental Response, Compensation, and Liability Acts for remedying conditions resulting from any release of contaminants to the environment.

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

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]