



State of Ohio Environmental Protection Agency

Southwest District Office

401 E. Fifth St.
Dayton, Ohio 45402

TELE: (937) 285-6357 FAX: (937) 285-6249
www.epa.state.oh.us

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

March 27, 2009

Mr. Dale S. Cooper
Cooper Excavating
7251 Bethlehem Rd.
Winchester, Ohio 45697

Re: **Open Burning of Construction and Demolition Debris Complaint,
Brown County**

Dear Mr. Cooper,

On March 4, 2009, I visited your property located on Deacon-Hollow Road, Russellville, Ohio, in response to a complaint that you were burning Construction and Demolition Debris (C&DD) at the location mentioned above. During my inspection you had indicated that you were burning "brush" along with some construction and demolition debris that came from the Fincastle demolition job on State Route 62, Fincastle, Ohio, in Eagle Township, Brown County.

Lt. Fetters of the Brown County Sheriff's Office reported that you had indicated to him that three truck loads of C & DD were already burning. In fact, Lt. Fetters had also reported that a 4th truck load of C & DD arrived while he was on site. He indicated that he had directed the 4th truck to take the C & DD to the landfill.

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

Disposal of solid waste in an unlicensed solid waste facility constitutes open dumping and places you in violation of the following Solid Waste Laws and Regulations. The following violations are being cited as a result of my investigation:

1) **OAC Section 3745-400-04 (A)(1): Authorized, Limited, and Prohibited Construction and Demolition Disposal Methods**

-This regulation requires that Construction and Demolition Debris go to a properly licensed Construction and Demolition Debris landfill.



- a) During my investigation it was determined that your property located on Deacon-Hollow Road is not a properly licensed Construction and Demolition Debris landfill.

2) OAC Section 3745-400-04 (B): Authorized, Limited, and Prohibited Construction and Demolition Disposal Methods

-This regulation states that no person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code.

- a) During the investigation, it was determined that illegal disposal of construction and demolition debris had occurred by transporting the C&DD to and un-licensed facility, for illegal disposal through open burning.

3) ORC Section 3734.01(I): Open Dumping

-This regulation states in part:

“Open dumping” means the depositing of solid wastes into a body of 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.

- a) The open dumping and open burning of solid wastes observed on your property is a violation of Ohio Revised Code (ORC).

4) OAC Section 3745-27-05(C), Open Dumping:

-This regulation 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”.



- a) By open dumping and burning the aforementioned wastes on your property, you have created an illegal disposal facility.

5) ORC Section 3734.02(C), Establishing a Solid Waste Facility Without a Permit

-This regulation requires a facility to have a permit, and 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, except that no permit shall be required under this division to install or operate a solid waste facility for sewage sludge treatment or disposal when the treatment or disposal is authorized by a current permit issued under Chapter 3704. or 6111. of the Revised Code".

- a) By open dumping and open burning solid waste on you property, you have been operating and maintaining a solid waste facility without a permit.

6) ORC Section 3734.05(A): Establishing a Solid Waste Facility Without a License:

-This regulation requires a facility to have a license, and 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".



2
3
4

- a) By open dumping and open burning solid waste on you property, you have been operating and maintaining a solid waste facility without a license.

7) ORC Section 3734.11(A): Compliance

-This regulation requires compliance with both the Ohio Revised Code (ORC) and the Ohio Administrative Code (OAC), and 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".

8) ORC Section 3734.06(A): Illegal Disposal

-Disposal of C&DD in an unlicensed facility is a violation of ORC Section 3714.06(A), which states is part:

"No person shall establish, modify, operate, or maintain a construction and demolition debris facility without a construction and demolition debris facility installation and operation license..."

- a) By open dumping and open burning solid waste on you property, you have been operating and maintaining a solid waste facility without a license

9) OAC Section 3745-37-01(C): Illegal Disposal

-Disposal of C&DD in an unlicensed facility is a violation of ORC Section 3714.06(A), which states is part:

"No person shall establish, modify, operate or maintain a construction and demolition debris facility without a construction and demolition debris facility license issued by the licensing authority except as otherwise specified in this rule".

- a) By open dumping and open burning solid waste on you property, you have been operating and maintaining a solid waste facility without a license.



10) ORC Section 3714.02: Open Burning

-The rules shall ensure that the facilities will not create a nuisance, fire hazard, or health hazard or cause or contribute to air or water pollution.

- a) The result of my investigation and interviews indicates that the construction and demolition debris from the Fincastle site was being transported to your property located on Deacon-Hollow Road, Russellville, Ohio, for the purposes of illegal disposal through open burning.

11) ORC Section 3714.13: Compliance

-This regulation states in part that the above violations of the Ohio Revised Code (ORC), constitute a violation of Ohio Revised Code (ORC) 3714.13

“(A) No person shall violate any section of this chapter.

(B) No person shall violate a rule adopted under this chapter.

12) ORC 3734.03

(C) No person shall violate an order issued under this chapter. Violation of an order issued by a board of health under this chapter is not also a violation of section 3709.20 or 3709.21 of the Revised Code, whichever is applicable.”

The Ohio Administrative Code (OAC) and the Ohio Revised Code (ORC) specifically prohibit open dumping of solid wastes and illegal disposal of C&DD. As such, acceptance of material and burning of material on the property must cease immediately and corrections of the violations cited herein are expected to begin immediately.

- This letter serves to inform you that the burned C&DD on your property must be removed for proper disposal (E.g., solid waste in a licensed sanitary landfill) and must be taken to a licensed facility.
- 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.



Cooper Excavating
March 27, 2009
Page 6

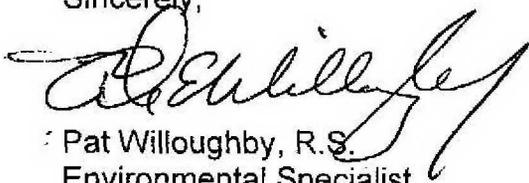
- Receipts documenting proper disposal must be submitted to Ohio EPA, Southwest District Office (SWDO), Division of Solid and Infectious Waste Management (DSIWM) at the letterhead address.
- A re-inspection will be scheduled to verify that the clean-up is complete to document your return to compliance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

Please respond in writing within fourteen (14) days of receipt of this correspondence regarding your remedy and implementation schedule in regards to the aforementioned violations.

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.

If you have any questions, please contact me at (937) 285-6048.

Sincerely,



Pat Willoughby, R.S.
Environmental Specialist
Division of Solid and Infectious Waste Management

cc: Stephen Dick, Brown County Health Department



69ES 7642 7000 0220 2002

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DALE S COOPER
COOPER EXCAVATING
7251 BETHLEHEM RD
WINCHESTER OH 45697

2. Article Number

(Transfer from service label)

7007 0220 0001 2491 5369

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

A. Signature

X

Betty Cooper

 Agent Addressee

B. Received by (Printed Name)

BETTY COOPER

C. Date of Delivery

3/30/09

D. Is delivery address different from item 1?

 Yes

If YES, enter delivery address below:

 No

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

7007 0220 0001 2491 5369

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage) (ded)

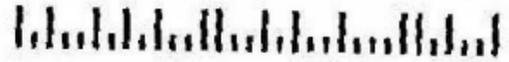
For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	

Postmark
Here

Restricted Deliv
(Endorsement R



Total Postage

DALE S COOPER
COOPER EXCAVATING

Sent To

7251 BETHLEHEM RD
WINCHESTER OH 45697

Street, Apt. No.
or PO Box No.

City, State, ZIP+4

Certified Mail Provides:

- A mailing label
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

Important Reminders:

- Certified Mail may ONLY be combined with First-Class Mail® or Priority Mail®.
- Certified Mail is *not* available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, August 2006 (Reverse) PSN 7530-02-000-9047