



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

Butler Co
Health Dept
Gen. Conv.

July 22, 2008

Mr. Mark Wells and Sarah Renner
5145 Augspurgen Rd
Hamilton, Ohio 45011-9549

RE: Notice of Violation- Open Dumping, Butler County

Dear Mr. Wells:

On July 8, 2008, I representing the Ohio EPA, Division of Solid and Infectious Waste Management (DSIWM) met with you in response to a complaint of open dumping and possible open burning at your property located at 5145 Augspurgen Road, Butler County, Ohio. The purpose of this inspection was to determine compliance with Ohio's Solid Waste Laws, Ohio Revised Code (ORC) 3734 and Ohio Administrative Code (OAC) 3734.

During my inspection on July 8, 2008, I observed the following:

I observed a large pile of yard waste (tree limbs, stumps and brush) commingled with miscellaneous municipal solid waste (food wrappers, plastic bottles, plastic plant containers) dumped on the ground in what appeared to be a pile to be burned on your property. Adjacent to the pile there was construction and demolition debris (fencing, old treated & painted lumber, bricks, concrete, and black corrugated piping) laying next to the pile and next to the fence line of the neighboring property (See Figures 1-8).



Figure 1: Large pile of yard waste commingled with MSW and C&DD





Figure 2: Black corrugated piping mixed with yard waste



Figure 3: Misc. MSW commingled with the large yard waste pile on the property

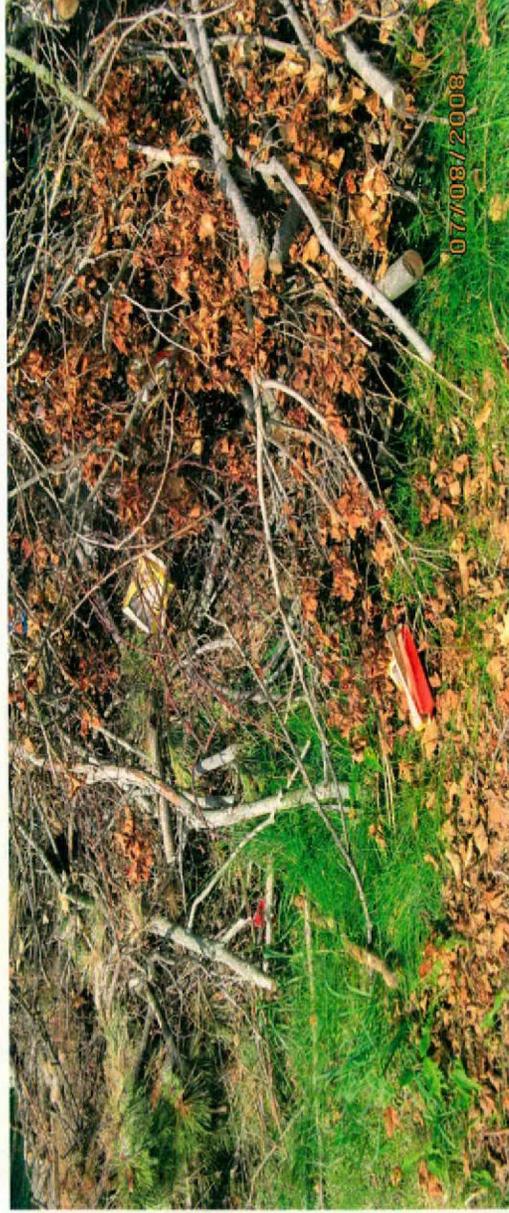


Figure 4: Misc. MSW commingled with the large yard waste pile on the property





Figure 5: Treated & painted lumber and plastic plant container next to yard waste pile & tree stumps



Figure 6: piles of soil, concrete & brick on property



Figure 7: Piles of soil, concrete & brick on property



Figure 8: Piles of soil, concrete, brick, fencing, lumber and yard waste mixed with MSW on property



The property (Parcel No. L5220058000008) is the site of open dumping of solid wastes and construction and demolition debris (C&DD).

Municipal solid waste is defined under OAC Rule 3745-27-01(M)(6), which states in part:

"Municipal solid waste" is a type of solid waste generated from community, commercial, and agricultural operations...

Construction and demolition debris is defined under OAC Rule 3745-400-01(F), which states in part:

"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.

Yard waste is defined under OAC Rule 3745-27-01(Y)(1), which states in part:

"Yard waste" means solid waste that includes only leaves, grass clippings, brush, garden waste, tree trunks, tree stumps, holiday trees, and prunings from trees or shrubs. Yard waste does not include industrial or agricultural processing wastes.

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 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.

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 open dumping of solid wastes observed on this property is a violation of Ohio Revised Code (ORC) Section 3734.03, which states in part:

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

Open Dumping 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”.

The above violations of the ORC, and the 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”.

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

The illegal disposal of C&DD on the property is a violation of OAC Rule 3745-400-04(B), which 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”.

Pursuant to Ohio Administrative Code (OAC) Rule 3745-400-01(E),

“Clean Hard Fill” is defined as 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.**

Please be advised the concrete may be source separated and used for clean hard fill on the property in accordance with OAC Rule 3745-400-05(A), “Clean hard fill consisting of reinforced or nonreinforced concrete, asphalt concrete, brick, block, tile, or stone shall be managed in one or more of the following ways:

- (1) Recycled into a usable construction material.
- (2) Disposed in licensed construction and demolition debris or other waste facilities.
- (3) Used in legitimate fill operations for construction purposes or to bring the site up to a consistent grade, on the site of generation.
- (4) 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, pursuant to paragraph (C) of this rule.”

The Notice of Intent to Fill needs to be submitted to Ohio EPA, Southwest District Office, attention Maria Lammers. Failure to submit a NOI to Ohio EPA is a violation of the Ohio's Construction and Demolition Debris Rules and Regulations and could



result in escalated enforcement. **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 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.

The above violations of the ORC, and the OAC, constitute a violation of ORC 3714.13 which states:

- (A) No person shall violate any section of this chapter.
- (B) No person shall violate a rule adopted under this chapter.
- (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.

- This letter serves to inform you that **the solid wastes and 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. The yard waste can be taken to a registered Class IV Compost 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.**
- **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. Failure to comply with this Notice of Violation will result in escalated enforcement.

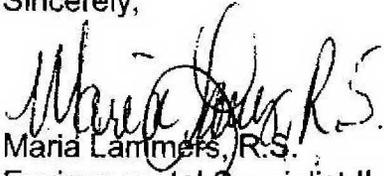
Compliance with the requirements outlined in this letter shall not relieve you of your obligation to comply with other legal obligations, including, but not limited to, Chapters 3704, 3714, 3734 or 6111 of the Ohio Revised Code or under the Federal Clean Water Act, Clean Air Act, Comprehensive Environmental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



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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

Enclosure: Notice of Intent to Fill Form
Ohio EPA's Class IV Composting Facility List

cc: Jerry Lanich, St. Clair Township Zoning Department

ML/mab

