

**Environmental  
Protection Agency**

**Governor  
Lt. Governor  
Director**

August 24, 2011

**RE: NOTICE OF VIOLATIONS**

**CERTIFIED MAIL**

Mark Malbin  
President  
Bencin Material Hauling & Disposal Services, Inc.  
2636 Brecksville Road  
Richfield, Ohio 44286

Dear Mr. Malbin:

On August 8, 2011, several agencies, including Ohio Environmental Protection Agency (Ohio EPA), conducted an inspection at Bencin Material Hauling & Disposal Services, Inc. (Bencin), located at 2636 Brecksville Road, Richfield, Ohio. The purpose of the inspection was to respond to a complaint that solid waste was accumulating on the property. Also, Ohio EPA wanted to check the status of violations observed during the April 14 and June 1, 2011 inspections. This letter provides a notice of violations and comments regarding solid waste and surface water management observed during the August 8, 2011 inspection.

The 15 acre site is owned by M. Alan Properties, Inc., of which, you are the president. The facility provides landscape materials including mulch, roll-off containers for solid waste, and dump trucks.

Present for the August 8, 2011 inspection were Scott Shane, Ohio EPA, Office of Special Investigations; John Wellman, Ohio Bureau of Criminal Identification and Investigation; Lee Ann Hinkle, Summit County Health District; and I, representing Ohio EPA, Division of Materials and Waste Management.

The purpose of the inspection was explained to Sarah Cox, representing Bencin. Later, during the inspection we spoke to Jeff Malbin (operating supervisor), also representing Bencin.

The inspection focused on the west portion of the property where buried waste was excavated during the June 1, 2011 investigation. There was little change in the appearance of the property's buried waste area, mulch area and transfer area. Specifically, the following concerns remain:

- buried solid waste and construction and demolition debris (CDD) is still on the property along the west and southwest perimeter.
- mulch area has leachate that is not being contained.
- transfer area contains solid waste.

New observations include large piles of wood pallets and asphalt grindings. All of the above are described below including the violations and comments. The violations are listed in three sections, titled Waste Disposal Area, Mulch Area, and Waste Transfer Area.

## Violations

### Waste Disposal Area

The disposal area included the west earth berm/soil stockpile south of the break in the west berm and continued south for approximately 450 feet to the southwest corner then east along the south berm/soil stockpile for approximately 190 feet. The width of the berm/soil stockpile ranged from approximately 40 feet to approximately 90 feet. Most of this area was recently graded, except for the outer edges of the berm and north section of the west berm that had a layer of wood mulch on the surface.

During the June 1, 2011 investigation, test pits were excavated in various locations in the waste disposal area. Solid waste was found in most test pits. Only construction and demolition debris (CDD), mainly clean hard fill, was found in several test pits just south of the light pole located near the center of west berm of the investigation area. The disposal area looked nearly the same as during the June 1, 2011 investigation.

Several piles of waste were visible that were excavated during the June 1, 2011 investigation. There was no evidence of waste removal.

Any solid waste disposed on the property is a violation of Ohio's solid waste laws and rules, Ohio Revised Code (ORC) 3734 and Ohio Administrative Code (OAC) 3745-27. In addition, any CDD disposed on the property is a violation of Ohio's CDD laws and rules, ORC 3714 and OAC 3745-400. Ohio EPA is considering further action regarding this situation.

The owner/operator is in violation of:

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

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

The June 1, 2011 investigation of the test pits revealed that the berm/soil stockpile contained the following: rubber waste including truck mud flaps, fiber, metal drum, plastic and metal debris, bottles, pop cans, plastic coolers, fabric bulk containers containing unknown gray powder, unknown white powder, furniture cushion, and bags of household garbage. Please consider the following:

**Solid waste** is defined in OAC 3745-27-01(S)(23) and states the following, *"Solid waste" means such unwanted residual solid or semisolid material, including but not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt and debris, as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from combustion of coal, biomass fuels, and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not*

*limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. Solid waste does not include any material that is an infectious waste or a hazardous waste."*

Based on the above definition, the buried materials are at least solid wastes and may include hazardous wastes. Further analysis is needed to determine the characteristics of the buried gray and white powders. Therefore, the owner/operator has violated OAC 3745-27-05(C) due to open dumping of solid wastes in the berm/soil stockpiles in the southwest area.

To achieve compliance, the owner/operator must:

- a. immediately stop all open dumping of solid wastes at Bencin's Richfield site and all other properties owned by Bencin;
- b. immediately stop operating as an illegal solid waste landfill at Bencin's Richfield site and all other properties owned by Bencin;
- c. 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; and
- d. all unknown materials like the gray and white powders must be characterized to determine if they are hazardous wastes. All hazardous waste must be disposed of at a licensed hazardous waste facility.

**2. 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."*

As stated in Item 1 above, the berm/soil stockpile in the southwest area contains solid wastes. Therefore, the owner/operator has violated ORC 3734.03 due to open dumping of solid wastes.

To achieve compliance, the owner/operator must comply with the requirements stated in 1.a, 1.b, 1.c and 1.d above.

**3. ORC 3734.05(A)(1) License for a 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."*

The owner/operator has violated ORC 3734.05(A)(1) due to failure to obtain a license prior to operating a solid waste facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 1.a, 1.b, 1.c and 1.d above.

**4. OAC 3745-37-01(A) License for a solid waste 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."*

The owner/operator has violated OAC 3745-37-01(A) due to failure to obtain a license prior to operating a solid waste facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 1.a, 1.b, 1.c and 1.d above.

**5. ORC 3734.05(A)(2) Permit and license 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 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."*

The owner/operator has violated ORC 3734.05(A)(2) due to failure to obtain a permit and license prior to operating a solid waste facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 1.a, 1.b, 1.c and 1.d above.

**6. 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."*

The owner/operator has violated ORC 3734.02(C) due to failure to obtain a permit prior to operating a solid waste facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 1.a, 1.b, 1.c and 1.d above.

**7. ORC 3734.11(A) Prohibitions**

This law 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."*

The owner/operator is in violation of the above rules and laws and is therefore in violation of ORC 3734.11(A). To achieve compliance, The owner/operator must comply with all applicable Ohio laws and rules.

**8. 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 . . ."*

CDD was observed in some of the test pits. The CDD included bricks, concrete and woody debris.

To achieve compliance, the owner/operator must:

- a. immediately stop all illegal disposal of CDD at Bencin's Richfield site and all other properties owned by Bencin;
- b. immediately stop operating as an illegal CDD landfill at Bencin's Richfield site and all other properties owned by Bencin;
- c. remove and properly dispose of all CDD at a licensed CDD disposal facility and provide copies of the disposal receipts to Ohio EPA; and
- d. dispose of mixtures of solid waste and CDD at a licensed solid waste facility.

**9. 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 . . ."*

CDD was observed in some of the test pits. The CDD included bricks, concrete and woody debris. The owner/operator has violated OAC 3745-37-01(C) due to failure to obtain a license prior to operating a CDD facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 8.a, 8.b, 8.c and 8.d above.

**10. ORC 3714.06(A) License for a CDD facility**

This law states in part, *"No person shall operate or maintain a construction and demolition debris facility without an annual construction and demolition debris facility operation license issued by the board of health or the health district in which the facility is located . . ."*

The owner/operator has violated ORC 3714.06(A) due to failure to obtain a license prior to operating a CDD facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 8.a, 8.b, 8.c and 8.d above.

**Mulch Area**

The mulch area includes piles of mulch and woody debris in the southwest corner of the property near the berm/soil stockpile. There are two leachate concerns that remain unchanged. These concerns were also seen during the April 14 and June 1, 2011 inspections.

First, surface water/leachate from the mulch area was ponding in and around the woody debris and mulch piles. Leachate from the pond was going directly to a small wetland containing trees. The wetland is located south of the leachate pond. The leachate was brown in color.

Second, leachate is being discharged through and/or along two black plastic pipes at the west side of the earth berm. The inlet for at least one of the discharge pipes is near the west edge of the surface water/leachate pond. The inlet is surrounded by four concrete slabs and appeared to be clogged because a dark leachate was pooling in the drain area.

The leachate discharging from the black plastic pipes and the leachate found in the excavated test pits on June 1, 2011 in the southwest area both had the same black color and rotten egg or septic odor. Due to same color and odor, it appears that the leachate generated by the buried, saturated waste is escaping either through or along the black plastic drains.

The leachate discharged from the black plastic pipes in the west berm flows into a ditch that drains west to the North Fork which flows south to Yellow Creek and then flows into the Cuyahoga River.

**11. ORC 6111.04 Leachate entering waters of the state**

Because leachate was leaving the site and entering surface water, the leachate is considered a discharge of pollutants to "waters of the state." The owner/operator does not have a National Pollutant Discharge Elimination System (NPDES) permit to discharge leachate material into waters of the state. Therefore, the owner/operator is in violation of ORC Section 6111.04.

**ORC Section 6111.04** states in part, *"No person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state, and any such action is hereby declared to be a public nuisance, except in such cases where the director of environmental protection has issued a valid and unexpired permit, or renewal thereof, as provided in sections 6111.01 to 6111.08 of the Revised Code, or an application for renewal is pending."*

Our records show that your company has an effective General Industrial Storm Water Permit, 3GR001157\*DG. This permit authorizes you to discharge clean uncontaminated storm water runoff. It does not authorize the discharge of pollutants such as leachate. An individual NPDES Permit would be necessary to discharge treated leachate. However, before this agency could issue this permit the proposed permit and treatment must go through Ohio's Antidegradation review in accordance with OAC 3745-1-05. The owner/operator would have to justify the proposed discharge and prove there is no alternative. Since there are several alternatives to this discharge an approval would be unlikely.

To be eligible to maintain your current General Permit, the owner/operator must immediately cease the discharge of pollutants to waters of the state of Ohio by containing the leachate on site and hauling it to an approved treatment facility such as a large municipal wastewater treatment plant. This will require pre-approval from this entity. Records proving the leachate is being properly disposed must be submitted to this office. Concurrently, steps must be taken to stop the production of this leachate at this site or any other location such as the Meech Avenue, Cleveland location. If the owner/operator does not comply with the aforementioned, then an Individual NPDES Permit will be required, written specifically for the site, for the discharge of clean uncontaminated storm water runoff. The General Permit will then be revoked. Should you have any questions concerning these permits you are directed to contact Philip Rhodes, DSW, NEDO at (330) 963-1136 or by e-mail at [phil.rhodes@epa.state.oh.us](mailto:phil.rhodes@epa.state.oh.us).

Discharging leachate to waters of the state of Ohio without a proper NPDES Permit and installing a treatment device (oil/water separator) is a violation of Ohio Revised Code 6111. The owner/operator is subject to civil and monetary penalties as described in Ohio Revised Code 6111.99.

To achieve compliance, the owner/operator must:

- a. immediately cease discharging leachate to waters of the state;
- b. collect and transport all leachate for treatment at a licensed waste water treatment plant;  
and
- c. comply with ORC 6111.04.

### **Waste Transfer Area**

A large pile of CDD and solid waste including yard waste, appliance parts, pop bottles, furniture cushion, safety vest, scrap tires and miscellaneous debris, was on the parking lot just south of the Bencin buildings. The pile was surrounded on three sides by concrete barriers.

The "transfer area" was on the parking lot surface which appeared to be a compacted aggregate. Ohio EPA considers this area an illegal solid waste transfer facility. Mr. Malbin said that the waste pile will be removed within a few weeks and Bencin will stop creating a waste pile at the property. Two men were removing recyclables from the waste pile during the inspection.

Operating an unlicensed, unpermitted solid waste transfer facility is a violation of Ohio's solid waste laws and rules, ORC 3734 and OAC 3745-27. The owner/operator does not qualify for the exemption below:

- **OAC 3745-27-03(A)(11)** states, "*Chapters 3745-27, 3745-29, 3745-30 and 3745-37 of the Administrative Code shall not apply to the following activities and/or facilities: . . . 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."*

The owner/operator is in violation of:

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

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

The transfer area contained yard waste, appliance parts, pop bottles, furniture cushion, safety vest, scrap tires and miscellaneous debris. These materials are considered solid wastes. Therefore, the owner/operator has violated OAC 3745-27-05(C) due to open dumping of solid wastes in the transfer area.

To achieve compliance, the owner/operator must:

- a. immediately stop all open dumping of solid wastes at Bencin's Richfield site and all other properties owned by Bencin;
- b. immediately stop operating as an illegal solid waste transfer facility at Bencin's Richfield site and all other properties owned by Bencin;
- c. 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; and
- d. all unknown materials must be characterized to determine if they are hazardous wastes.

**13. 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."*

As stated in Item 1 above, there was solid waste in the transfer area. Therefore, the owner/operator has violated ORC 3734.03 due to open dumping of solid wastes.

To achieve compliance, the owner/operator must comply with the requirements stated in 12.a, 12.b, 12.c and 12.d above.

**14. ORC 3734.05(A)(1)** License for a 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."*

The owner/operator has violated ORC 3734.05(A)(1) due to failure to obtain a license prior to operating a solid waste transfer facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 12.a, 12.b, 12.c and 12.d above.

**15. OAC 3745-37-01(A)** License for a solid waste 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."*

The owner/operator has violated OAC 3745-37-01(A) due to failure to obtain a license prior to operating a solid waste transfer facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 12.a, 12.b, 12.c and 12.d above.

**16. 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 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."*

The owner/operator has violated ORC 3734.05(A)(2) due to failure to obtain a permit prior to operating a solid waste transfer facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 12.a, 12.b, 12.c and 12.d above.

**17. 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.."*

The owner/operator has violated ORC 3734.02(C) due to failure to obtain a permit prior to operating a solid waste transfer facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 12.a, 12.b, 12.c and 12.d above.

**18. In addition, the establishment of a solid waste transfer station requires permits for leachate containment and potential site storm water management. Ohio EPA, Division of Surface Water (DSW) investigated the owner/operator to determine if the owner/operator maintained compliance with the following laws:**

- **ORC 6111.44:** This law states: *"no municipal corporation, county, public institution, corporation, or officer or employee thereof or other person shall provide or install sewerage or treatment works for sewage, sludge, or sludge materials disposal or treatment or make a change in any sewerage or treatment works until the plans therefore have been submitted to and approved by the director of environmental protection."*
- **ORC 6111.04:** states in part, *"No person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state, and any such action is hereby declared to be a public nuisance, except in such cases where the director of environmental protection has issued a valid and unexpired permit, or renewal thereof, as provided in sections 6111.01 to 6111.08 of the Revised Code, or an application for renewal is pending."* *"No visible particulate emissions except for 3 minutes during any 60 minute period."*

The owner/operator is in violation of both ORC 6111.44 and ORC 6111.04.

To achieve compliance, the owner/operator must:

- a. comply with the requirements stated in 12.a, 12.b, 12.c and 12.d above;
- b. immediately cease discharging any leachate from the transfer area to waters of the state;
- c. collect and transport any leachate from the transfer area for treatment at a licensed waste water treatment plant; and
- d. comply with ORC 6111.04 and ORC 6111.44.

### **Comments**

1. There were new piles of materials, including a large pile of wood pallets located near the west perimeter in the southwest area. The pile was approximately 40 feet wide, 100 feet long and 20 feet high. At the north end of the pallet pile is a pile of yard waste, mainly tree branches. Also, south of the pallet pile is a small manure pile. Mr. Malbin said the pallets will be moved to the Meech Avenue, Cleveland property to be made into mulch and some pallets will be refurbished at Tri-County Pallets in Akron.

The pallet/yard waste pile and manure pile are generating leachate. Leachate is ponding just north of the pallet/yard waste pile. Leachate is also draining south of the pallet and manure piles. All leachate must be contained and kept from leaving the site.

2. Numerous piles of asphalt were located near the middle of the west perimeter. The piles were measured in roughly two piles. The larger pile was approximately 50 feet wide, 100 feet long and 15 feet high. The smaller pile was approximately 75 feet wide, 100 feet long, and four feet high. Ohio EPA recommends recycling the asphalt grindings to decrease potential leachate generation.
3. During the June 1, 2011 inspection there were approximately 10 open top roll-off boxes, containing solid wastes located near the southwest area. During the August 8, 2011 inspection, there were only three open top roll-off boxes. Ohio EPA recommends storing any temporarily stored solid wastes in covered waterproof containers to prevent the generation of leachate and to prevent breeding areas for mosquitoes.

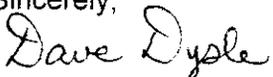
Nothing in this letter shall be construed to authorize any waiver from the requirements of any applicable state or federal laws or regulations. This letter shall not be interpreted to release the owner/operator from responsibility under Chapters 3704., 3714., 3734., or 6111. of the Ohio Revised Code 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.

Mark Malbin  
Bencin Material Hauling & Disposal Services, Inc.  
August 24, 2011  
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Please respond in writing to the above violations and comments within 14 days of receipt of this letter. Please include a description and/or schedule for compliance. Please include descriptions of the transfer containers that were used in the attached summary.

If you should have any questions regarding this letter, please call me at (330) 963-1286.

Sincerely,



Dave Dysle  
Environmental Specialist  
Division of Materials and Waste Management

DD/cl

cc: Kelly Jeter, DMWM, CO  
Marlene Kinney, DMWM, NEDO  
Scott Shane, OSI, CO  
Bart Ray, OSI, NEDO  
John Wellman, AGO, BCI  
Phil Rhodes, DSW, NEDO  
Tom Kohl, U.S. EPA, CID  
Jim Kalal, Richfield Police Department  
David Cietz, Village of Richfield  
Sean Vadas, Akron Regional Air Quality Management District  
Lee Ann Hinkle, Summit County Health District  
File: [Sowers/COUN/Summit/GEN/77]