



Environmental  
Protection Agency

John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

Re: Heinz North America  
OHD005034301  
Sandusky County  
Complaint #2982  
Hazardous Waste  
**NOV & Partial Return to Compliance**

May 11, 2011

Ms. Cathy Shell  
Manager of Loss Prevention  
Heinz North America  
1200 North Fifth Street  
Fremont, Ohio 43420

Dear Ms. Shell:

On July 21, 2010, you accompanied me during Ohio EPA's complaint investigation (CI) of Heinz North America (HNA) located at 1200 North Fifth Street in Fremont, Ohio. I identified six violations of Ohio's hazardous waste rules and notified you of these violations in a Notice of Violation (NOV) letter dated August 23, 2010. On September 27, 2010, you responded to Ohio EPA's NOV. On November 22, 2010, I informed you that Ohio EPA determined that all the waste had been abandoned and could not be reused. I also informed you that HNA did not perform the proper test method to determine the pH of the waste and therefore, six other drums were determined to be hazardous waste. As a result of my phone message, on November 22, 2010, HNA labeled drums BT-40, BT-84, BT-85 and BT-96 with the words "Hazardous Waste" and placed them into a locked storage area set up at the Bloom Road property. On November 29, 2010, I informed you that nine other drums were not sampled and should be immediately. I listed the specific drums by HNA's drum numbers. On January 7, 2011, HNA had Clean Harbors transport ten drums of hazardous waste down a public right-of-way to its facility's hazardous waste accumulation area, at the main plant. On January 17 and January 20, 2011, HNA had Clean Harbors transport ninety-six drums of waste off-site for disposal.

On February 8, 2011, in a Partial Return to Compliance (PRTC) letter, Ohio EPA notified you that the violations first cited in the August 23, 2010, NOV had not been corrected and provided comments and requirements. This letter will summarize the violations first cited in the August 23, 2010, NOV and HNA's response, dated March 15, 2011, which was received by Ohio EPA on March 16, 2011. Based on information received from HNA on March 16, 2011, Ohio EPA has identified three additional violations of Ohio's hazardous waste laws that will be summarized at the end of this letter.

Below is a summary of the violations cited in Ohio EPA's August 23, 2010, NOV and your compliance status with respect to each. Three new violations are cited. In order to correct these violations, you must do the following and send me the required information, **within 30 days** of your receipt of this letter:

1. **Unpermitted Hazardous Waste Treatment, Storage & Disposal  
ORC Section 3734.02(E)&(F)**

No person shall store, treat, or dispose of hazardous waste identified or listed under this chapter and rules adopted under it ... except at or to any of the following: (1) A hazardous waste facility operating under a permit issued in accordance with this Chapter....

**HNA became an unpermitted hazardous waste storage facility by: unlawfully storing and abandoning corrosive hazardous waste (D002) in at least nineteen 55-gallon drums for at least ten years, in an open lot across from the manufacturing facility in Fremont, Ohio. HNA must immediately cease this unpermitted storage of hazardous waste.**

HNA must immediately arrange for the lawful transport of its hazardous waste to a permitted hazardous waste treatment, storage or disposal facility. HNA must submit to me a legible copy of the manifest(s), signed by a representative of the permitted treatment, storage or disposal facility that documents the proper off-site shipment of all its hazardous waste. HNA must also provide documentation that describes the procedures that will be taken, immediately; to ensure that unpermitted storage does not happen again.

In the September 27, 2010, response letter, HNA claims that the drums did not contain waste materials but rather original product that had not been fully emptied from the original containers. Ohio EPA has determined that the drums contain waste that has been abandoned since: the drums were outside and unsecured, most of the containers were unlabeled, many of the drums were open and missing bung caps, some of the drums were found on their sides, some of the drums were severely damaged and they were left in this condition for ten years. This was communicated by phone to you on November 22, 2010.

On August 2, 2010, I returned to HNA to observe as Clean Harbors sampled the waste in the containers. On August 10, 2010, HNA submitted the initial results of the sample analyses. HNA identified nine drums containing hazardous waste, since the waste had pH units of two or less and twelve and one half or more. You requested that Clean Harbors analyze these nine drums with a more accurate instrument to verify the pH units. On August 12, 2010, HNA submitted revised results from further waste analyses. As a result, only three 55-gallon drums of hazardous waste were identified consisting of about 100 gallons: Drum BT-40, pH 13.6; Drum BT-84, pH 13.8 and BT-96, pH 1.11. On August 13, 2010, you explained that the original pH analysis was done with pH strips and the revised analysis was accomplished with a hand held pH meter.

In the September 27, 2010, response letter, HNA states that it found 109 drums in the Bloom Road property and identified 71 drums of waste Zesty Smoke Flavorings, 22 drums of waste Quorum Yellow, 9 drums of waste Lubri-Klenz LF, 3 drums of waste caustic soda, 1 drum of waste sulfuric acid and 1 drum of waste OPTAL 10-7016, an adhesive.

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Furthermore, HNA states that it had identified another drum of hazardous waste, BT-85, containing caustic soda with a pH of 12.7. Therefore, at least four drums of hazardous waste have been identified at the Bloom Road property.

In order to ensure that unpermitted storage does not happen again at the Fremont facility, attached to your September 27, 2010, response letter is a property inspection procedure and form. A monthly inspection is a good approach to ensuring that no wastes are placed or left on the two HNA properties in Fremont. However, it appears that the inspection form should state, "If any "Yes" answers, please explain..."

In a phone conversation on December 10, 2010, you explained that HNA would immediately begin to arrange for the disposal of the hazardous waste and send a copy of the manifest to Ohio EPA. You also explained that you would have HNA dispose of the non-hazardous waste and send a copy of the shipping papers to Ohio EPA.

**In the March 16, 2011, response letter, HNA states that it has an EPA ID Number and therefore, it is not appropriate to identify the storage area as "abandoned or unpermitted." In Ohio, it is necessary to possess a hazardous waste permit in order to store hazardous waste for more than 90 days. Therefore, the waste has been abandoned, for reasons already stated, and the site is an unpermitted storage facility.**

**In the March 16, 2011, response letter, HNA states that it had Clean Harbors dispose of the non-hazardous waste on January 17 and January 20, 2011. Attached to the letter are copies of the non-hazardous waste manifests: Heinz11711-1 (from January 17, 2011) 61 drums sent to Clean Harbors El Dorado LLC in El Dorado, AR; Heinz11711-2 (from January 17, 2011) 1 drum sent to Clean Harbors El Dorado LLC in El Dorado, AR; Heinz11711-3 (from January 17, 2011) 52 empty drums sent to Clean Harbors Recycling Services of Ohio, LLC in Hebron, OH; Heinz12011-1 (from January 20, 2011) 27 drums sent to Clean Harbors El Dorado LLC in El Dorado, AR; and Heinz12011-2 (from January 20, 2011) 9 drums sent to Clean Harbors El Dorado LLC in El Dorado, AR. These manifests represent a total of 98 drums of non-hazardous waste, according to HNA.**

**Also in the March 16, 2011, response letter, HNA explained that it had Clean Harbors transport ten drums of waste (four hazardous waste drums: BT-40, BT-84, BT-85 and BT-96 and six other suspected hazardous waste drums: BT-3, BT-22, BT-31, BT-54, BT-63, and BT-64) out of the Bloom Road property to the facility's Accumulation Area located at 1200 North Fifth Street on January 7, 2011. In a phone conversation with you on May 6, 2011, you explained that the waste was moved from the Bloom Road property, down Bloom Road, which is a public road, and into the plants adjacent property and accumulation area. A standard Bill of Lading (BOL) was prepared for the transportation of the waste.**

**Attached to the March 16, 2011, response letter is a revised copy of HNA's Property Inspection Form.**

**2. Waste Evaluation  
OAC Rule 3745-52-11**

A generator must determine whether its waste is hazardous by first determining if the waste is listed as a hazardous waste in rules 3745-51-30 to 3745-51-35; by testing the waste according to the methods set forth in rules 3745-51-20 to 3745-51-24; or by applying knowledge of the hazardous characteristic of the waste in light of the materials or the processes used. HNA failed to adequately evaluate the waste in one hundred nine drums, one large wooden tank, one plastic tote and one steel 55-gallon drum found in the open truck lot property. Since the initial complaint investigation, HNA has sampled and analyzed most of the waste.

However, in order to abate this violation, you must immediately do the following:

1. Submit an MSDS for the glue.

The MSDS for Henkel's OPTAL 10-7016 was attached to your September 27, 2010, response letter. **Therefore, this violation was abated on September 27, 2010.**

2. Identify the waste compounds in the drums, tote and tank.

In the September 27, 2010, response letter, HNA states that it found 109 drums in the Bloom Road property and identified 71 drums of waste Zesty Smoke Flavorings, 22 drums of waste Quorum Yellow, 9 drums of waste Lubri-Klenz LF, 3 drums of waste caustic soda (sodium hydroxide), 1 drum of waste sulfuric acid and 1 drum of waste OPTAL 10-7016. Furthermore, HNA states that it had identified another drum of hazardous waste, BT-85, containing caustic soda with a pH of 12.7.

In the September 27, 2010, response letter HNA explains that Clean Harbors had Belmont Labs test samples from BT-40 and BT-84. Belmont Labs found sodium present, which is expected in caustic soda (sodium hydroxide). Belmont Labs tested a sample of BT-96 and found sulfate present, which is expected in sulfuric acid.

However, Ohio EPA has determined that HNA has failed to sample and analyze the waste in, at least, the following nine drums: BT-49, BT-51, BT-68, BT-73, BT-75, BT-81, BT-82, BT-83, and BT-94. HNA must properly sample and analyze the waste in these containers immediately and provide Ohio EPA with a copy of the analytical report. This was communicated by phone to you on November 29, 2010.

**On August 2, 2010, HNA believed that the waste found on the Bloom Road property was not hazardous, since it was used in the manufacture of food products.**

Due to the large number of drums and containers of waste (109 drums of waste were identified by HNA and one steel drum, one large wooden tank and one plastic tote was identified by Ohio EPA) it was becoming difficult for Clean Harbors personnel to collect samples from each one. I was asked if it was necessary to sample every container. I explained that it was up to HNA to decide if it wanted to sample each one or not, but that HNA would have to use data from the analytical results to characterize the drums not sampled or re-mobilize to sample again. Since then, the characterization of the waste has been problematic and incomplete and after the November 29, 2010, phone conversation, HNA should have had the nine drums sampled and analyzed. Apparently this was not done.

According to information provided in HNA's March 16, 2011, response letter, HNA failed to sample and analyze these nine drums. Therefore, Ohio EPA has determined that the following nine drums contained corrosive hazardous waste: BT-49, BT-51, BT-68, BT-73, BT-75, BT-81, BT-82, BT-83, and BT-94.

Finally, concerning the wooden tank and the plastic tote, in your September 27, 2010, response letter you report that these were dismantled by the contractor performing the cleanup of the site. The contractor was Mike Abdo of Abdo Wrecking. Mr. Abdo stated that both the tank and the tote were empty when he removed them from the site.

3. Explain the difference between container BT-89A (pH 9) and BT-89B (pH 13.8).

In the September 27, 2010, response letter HNA explains that the reference to BT-89B was a typographical error. This drum is really BT-84. Attached to your letter is an email message from Mike James indicating this. **Therefore, this violation was abated on September 27, 2010.**

4. Describe, in detail, the analytical methods for both pH and flash point. Include at least a description of the analytical device and its calibration. Describe the buffer solutions used for calibrating the pH meter and any other quality assurance quality control measures used.

In the September 27, 2010, response letter, HNA explains that flash point was determined through a standard open cup test method. HNA also explains that Clean Harbor conducted pH tests with an Accumet Basic AP15 meter by Fisher Scientific with probe number 13-620-530. Michael James' September 17, 2010, email reveals that the pH meter was only calibrated with buffers of pH 4 and 10. Mr. James further states that "One of the pH buffer solutions is read and logged in the journal after every five samples. Corrective action is taken if any of the known solutions vary by more than 0.1 units."

The introduction to Chapter Six of SW-846 states "This chapter addresses procedures for method-defined parameters, where the analytical result is wholly dependent on the process used to make the measurement. Changes to the specific methods may change the end result and incorrectly identify a waste as nonhazardous. Therefore, when the measurement of such method-defined parameters is required by regulation, those methods are not subject to the flexibility afforded in other SW-846 methods."

SW-846 Method 9045D, Section 3.0 Interferences, Paragraph 3.1 states "Samples with very low or very high pH may give incorrect readings on the meter. For samples with a true pH of >10, the measured pH may be incorrectly low. This error can be minimized by using a low-sodium-error electrode. Strong acid solutions, with a true pH of <1, may give incorrectly high pH measurements."

SW-846 Method 9045D, Section 5.0 Reagents, Paragraph 5.3 states "Primary standard buffer salts are available from the National Institute of Standards and Technology (NIST) and should be used in situations where extreme accuracy is necessary. Preparation of reference solutions from these salts requires some special precautions and handling, such as low-conductivity dilution water, drying ovens, and carbon-dioxide-free purge gas. These solutions should be replaced at least once each month." Paragraph 5.4 states "Secondary standard buffers may be prepared from NIST salts or purchased as solutions from commercial vendors. These commercially available solutions, which have been validated by comparison with NIST standards, are recommended for routine use."

SW-846 Method 9045D, Section 7.0 Procedure, Paragraph 7.1.2 states "Each instrument/electrode system must be calibrated at a minimum of two points that bracket the expected pH of the samples and are approximately three pH units or more apart. Repeat adjustments on successive portions of the two buffer solutions until readings are within 0.05 pH units of the buffer solution value. If an accurate pH reading based on the conventional pH scale [0 to 14 at 25°C] is required, the analyst should control sample temperature at 25±1°C when sample pH approaches the alkaline end of the scale (e.g., a pH of 11 or above)."

According to the September 27, 2010, response letter and attachments, HNA has not performed pH testing for its waste properly. It appears that SW-846 Method 9045D was not used. HNA did not address the probable interferences inherent when evaluating waste with a low or high expected pH; HNA did not provide all the necessary buffer solutions; HNA did not provide buffer solutions that bracketed the expected pH of the wastes and were approximately three pH units apart; HNA did not repeat adjustments on successive portions of the two buffer solutions until reading were within 0.05 pH units; and HNA apparently did not control sample temperature.

Therefore, Ohio EPA has determined that, at least, the following six drums contain corrosive hazardous waste (D002): BT-3, BT-22, BT-31, BT-54, BT-63, and BT-64.

If HNA wishes to disprove this determination it must perform detailed and accurate pH analyses and document all steps required by SW-846 method 9045D. This was communicated by phone to you on November 22 and November 29, 2010. On December 10, 2010, you indicated in a phone conversation that you would have Clean Harbors reanalyze the waste.

**According to the March 16, 2011, response letter, HNA had Clean Harbors sample the drums of waste on March 10, 2011, and send the samples to a third party lab for analysis. In a phone conversation with you on May 6, 2011, you explained that the drums had been sampled and analyzed and that you would provide the results to Ohio EPA, hopefully before the end of the day. You stated that the results demonstrated that the waste did not have a pH of 2 or less or 12.5 or more. However, the March 16, 2011, response letter indicates that the six drums of waste were consolidated into two drums before they were sampled. Therefore, the results would not be representative of the conditions in each of the six drums. The pH could have been different in each of the six drums. HNA states in the March 16, 2011, response letter that "As soon as results are received, they will be provided to you." Ohio EPA has not received the analytical results from HNA. These results must be submitted immediately.**

5. Provide the analytical results for the waste in the steel 55-gallon drum.

You provided a photo of this drum in an email message on September 23, 2010. The waste was sampled and analyzed and found to be non-hazardous. This data was added to the table in Attachment A, which was attached to your September 27, 2010, response letter. **Therefore, this violation was abated on September 27, 2010.**

6. Provide a statement that there is no other waste in the truck lot area.

HNA must state that it has evaluated the waste in the containers and tank, and any other waste discovered at the facility by Ohio EPA or HNA, in accordance with the requirements of Ohio Administrative Code Rule 3745-52-11 and this letter.

**In the March 16, 2011, response letter, HNA states that "As of January 20, 2011, all hazardous and non-hazardous waste materials as defined by OEPA have been removed from the Bloom Road section of the property." Therefore, this violation was abated on March 16, 2011.**

3. **Container Labeling  
OAC Rule 3745-52-34(A)(3)**

While being accumulated, each container must be labeled or marked clearly with the words "Hazardous Waste".

HNA failed to label drums of corrosive hazardous waste being accumulated outside in the open truck lot with the words "Hazardous Waste".

**In the March 16, 2011, response letter, HNA explains that hazardous waste drums BT-40, BT-84, BT-85 and BT-96 were labeled with the words "Hazardous Waste" on November 22, 2010.**

**Attached to the March 16, 2011, response letter is a photograph of four drums of hazardous waste that are all labeled with the words "Hazardous Waste". Two of the drums represent the consolidation of drums BT-40, BT-84, BT-85 and BT-96 and the other two represent the consolidation of drums BT-3, BT-22, BT-31, BT-54, BT-63, and BT-64. Therefore, this violation was corrected on March 16, 2011.**

**4. Container Labeling  
OAC Rule 3745-52-34(A)(2)**

The date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

HNA failed to mark drums of corrosive waste being accumulated outside in the open truck lot with the accumulation date for the waste. In order to correct this violation, HNA must immediately ship all the hazardous waste identified in this letter to a permitted hazardous waste facility and submit copies of the manifests documenting this.

**In the March 16, 2011, response letter HNA explained that the drums were marked with the accumulation date of November 22, 2010, because this was the day the Ohio EPA notified HNA that the waste was considered hazardous. It is the generator's responsibility to determine if a waste is hazardous and to manage it properly from the day it is generated. The drums had been abandoned for at least ten years, long before November 22, 2010. Therefore, HNA should determine a more appropriate accumulation date.**

**5. Container Inspections  
OAC Rule 3745-66-74**

The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. The owner or operator must record inspections in an inspection log or summary.

HNA failed to conduct and record inspections of the area where corrosive hazardous waste containers were stored for at least ten years. In order to correct this violation HNA must conduct and record inspections of the containers accumulated outside in the open truck lot. HNA must submit copies of the inspection records to Ohio EPA.

Attached to the March 16, 2011, response letter are copies of HNA's container inspection forms for the period of January 4, 2011, to March 5, 2011. Prior to this time period, HNA stated that it performed "visual weekly visits" to the container storage area at Bloom Road and did not record these visual weekly visits. HNA did not comply with this rule until the hazardous waste was moved from the Bloom Road property to the Hazardous Waste Accumulation Area in the main plant section. This violation was abated on March 16, 2011.

**6. Maintenance and Operation of Facility  
OAC Rule 3745-65-31**

Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

HNA did not operate the truck lot where corrosive hazardous waste was stored in a manner that protected human health and the environment. The lot is open and not secured and most of the drums were not closed. In order to correct this violation, HNA must provide security for the storage area and conduct and record inspections of the storage area until the corrosive hazardous waste is shipped to a permitted hazardous waste facility.

**In the March 16, 2011, response letter, HNA states that the gate for the Bloom Road property was locked after my July 21, 2010, investigation. See Ohio EPA's comments about the container inspections above. HNA reports that on January 20, 2011, it moved the hazardous waste to its Hazardous Waste Accumulation Area in the main plant section. This violation was abated on March 16, 2011.**

Based on information received from HNA on March 16, 2011, Ohio EPA has identified three additional violations of Ohio's hazardous waste laws. In order to correct this violation, you must do the following and send me the required information, **within 30 days** of your receipt of this letter:

**7. Unpermitted Hazardous Waste Treatment, Storage or Disposal  
ORC Section 3734.02(E)&(F)**

No person shall **store**, treat, or dispose of hazardous waste identified or listed under this chapter and rules adopted under it, regardless of whether generated on or off the premises where the waste is stored, treated, or disposed of, or transport or cause to be transported any hazardous waste identified or listed under this chapter and rules adopted under it to any other premises, except at or to any of the following: (1) A hazardous waste facility operating under a permit issued in accordance with this chapter; (2) A facility in another state operating under a license or permit issued in accordance with the "Resource Conservation and Recovery Act of 1976" 90 Stat. 2806, 42 U.S.C.A. 6921, as amended.

HNA has established another unpermitted hazardous waste storage facility by: **having hazardous waste transported from its Bloom Road property, down a public right-of-way to an off-site facility at its Hazardous Waste Accumulation Area in the main plant section.** HNA must **immediately cease the storage of hazardous waste from its off-site Bloom Road property.** HNA must provide documentation that describes the procedures that will be taken, immediately, to ensure that unpermitted storage does not happen again.

Since HNA has violated ORC Section 3734.02(E) & (F) by becoming an unpermitted storage facility (TSD), it is subject to OAC Rules 3745-55-10 through 3745-55-48 and 3745-55-97. Therefore, you may be required to close the main plant storage area. A closure plan describes the steps necessary to investigate the extent of contamination and to clean up all contamination found.

HNA also is subject to all applicable general facility standards found in OAC Chapters 3745-54 and 55 until such time as HNA has demonstrated that it has ceased operations as an unpermitted storage facility. Additionally, at any time, Ohio EPA may assert its right to have HNA begin facility-wide cleanup pursuant to the Corrective Action process under Ohio law.

**8. OAC Rule 3745-52-20(A)  
Preparation of Manifest**

A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage or disposal must prepare a uniform hazardous waste manifest before transporting the hazardous waste off-site.

HNA failed to complete a hazardous waste manifest when it had Clean Harbors transport its hazardous waste from its Bloom Road property, down a public right-of-way to an off-site facility at its Hazardous Waste Accumulation Area in the main plant section, on January 7, 2011.

**9. OAC Rule 3745-270-07(A)(2)  
Land Disposal Restriction Notice**

With the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice [land disposal restriction notice] to each treatment or storage facility receiving the waste, and place a copy in the generator's files. The notice must include the information in Column A of Table 1 of this rule.

HNA failed to complete a land disposal restriction notice when it had Clean Harbors transport its hazardous waste from its Bloom Road property, down a public right-of-way to an off-site facility at its Hazardous Waste Accumulation Area in the main plant section, on January 7, 2011.

Ohio EPA considers these violations to be serious violations, ones for which further enforcement action may be taken.

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If you have any questions about this letter or your requirements, please contact me immediately at (419) 373-3074. You can find copies of the rules and other information on the division's web page at <http://www.epa.ohio.gov>. Ohio EPA also has helpful information about pollution prevention at <http://www.epa.ohio.gov/ocapp>.

Sincerely,



Don North  
District Representative  
Division of Materials and Waste Management

/llr

pc: Colleen Weaver, DMWM, NWDO  
Cindy Lohrbach, DMWM, NWDO  
DMWM-HW, NWDO File, Sandusky County, Heinz File ;

ec: Don North, DMWM, NWDO

**NOTICE:**

Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with all applicable regulations.