



**Environmental
Protection Agency**

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

October 31, 2011

**RE: MUSKINGUM COUNTY
SITE - GENERAL**

Downing Company
850 Airport Road
Zanesville, Ohio 43701

To Whom It May Concern:

On July 20, 2011, Ohio EPA Southeast District Office received a complaint regarding the open dumping of solid waste on a parcel (#51-30-03-16-014) owned by Downing Company located south of Cinderpit Road, near the intersection with US 40, east of Zanesville, Ohio. On July 28, 2011, I investigated this complaint and found that this location was being used as a clean hard fill disposal area. I also observed that a small amount of solid waste (plastic pipe, metal, fabric, etc.) was included in the clean hard fill. I forwarded a letter to you regarding this matter on July 29, 2011.

On August 30, 2011, I conducted a follow-up inspection of the site. It was noted that prohibited material was still present. In addition to the material previously noted from my initial inspection, on August 30, 2011, I also observed wood and brush. I forwarded a second letter to you on September 8, 2011.

On October 28, 2011, I conducted another follow-up inspection of the site and noted that conditions appeared unchanged. To date, I have received no response from you regarding this matter.

Please note, in accordance with Ohio Administrative Code Rule 3745-400-05, that clean hard fill consists only of concrete, asphalt, brick, block, tile and stone. All material which does not meet the definition of clean hard fill or clean soil must be removed from the property and disposed of properly. Because material other than clean hard fill was noted at the site, you are in violation of Ohio Revised Code (ORC) chapter 3734.03 and Ohio Administrative Code (OAC) 3745-27-05(C).

ORC 3734.03 states in part:

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

OAC 3745-27-05(C) states:

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.

Please also note that when clean hard fill material is removed from a property and used for filling or raising the grade of a property other than the site of generation, a "Notice of Intent to Fill" must be forwarded to this office seven (7) days prior to the commencement of activities.

Please respond to this correspondence within 14 days of receipt. Your response should include details of your actions taken to properly dispose or recycle the current solid waste (material other than clean hard fill or soil) on your property. Failure to redress listed violations and respond within this timeframe may result in escalated enforcement against Downing Company for violation of Chapter 3734. of the Ohio Revised Code, which carries a civil penalty of up to \$10,000 per day for each violation. Documentation of steps taken to return to compliance includes written correspondence, updated policies and photographs, as appropriate, and may be submitted electronically to mark.mansfield@epa.ohio.gov. If Downing Company is unable to return to compliance within the fourteen (14) day timeframe, please contact Mark Mansfield at (740) 380-5428.

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 or operator, or others, from responsibility under Chapters 3704, 3714, 3734, or 6111 of the Ohio Revised Code or under the Federal Clean Water Act, Resource Conservation and Recovery Act, or Comprehensive Environmental Response, Compensation, and Liability Act for remedying conditions resulting from any release of contaminants to the environment.

Sincerely,



Mark Mansfield
Environmental Specialist II
Division of Materials and Waste Management

MM/cb