

Butler Co.
Schlichter LF
Gen. Corp.



State of Ohio Environmental Protection Agency

Southwest District Office

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

October 26, 2009

Henry L. Bowling
125 Hermay Drive
Hamilton, Ohio 45013

Don Hershner
3653 Oxford Millville Road
Oxford, Ohio 45056-9038

**RE: Schlichter C&DD Facility, Butler County
Notice of Violation- Failure to Comply with Consent Orders & Inspection
Correspondence**

Dear Mr. Bowling and Mr. Hershner:

On October 21, 2009, Monte Bluebaum and I conducted a comprehensive inspection of the Schlichter C&DD Landfill (Foundation's Landfill) located in Butler County. The purpose of this inspection was to determine compliance with the requirements set forth in Agreed Order for Judgment (Order) between the State of Ohio "Ohio EPA" and Old River Valley Place of Nature Foundation "Foundation" filed in Butler County Court of Common Pleas dated March 9, 2007 and to determine compliance with Ohio's Scrap Tire Regulations.

During our inspection the following observations were made:

1. I observed approximately fifty (50) rim-less scrap tires located near the fenced area at the entrance of the Facility (See Figures 1 and 2). Scrap tires must be properly stored and managed in accordance with the Ohio Administrative Code (OAC) Rule 3745-27-60. Improper storage of scrap tires is considered open dumping of solid waste and is a violation of the Ohio Administrative Code and Ohio Revised Code. The Foundation's improper storage and handling of scrap tires on the property is a violation of **OAC Rule 3745-27-60(B)(1)**, which states in part:

"The storage of scrap tires in any amount outside or inside a trailer, vehicle, or building shall be deemed a nuisance, a hazard to public health or safety, or fire hazard unless the tires are stored in accordance with the following standards:

Sufficient drainage shall be maintained such that water does not collect in the area where scrap tires are stored."

This is also 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..."

The scrap tires on the property have water collecting in them and mosquito larvae and adult mosquitoes were present. ORVPNF's failure to control mosquitoes at the premises is a violation of OAC Rule 3745-27-60(C)(1), which states in part:

"One or more of the following shall be done to control mosquitoes at the premises..."

- (a) remove liquids from scrap tires within twenty-four hours of accepting the scrap tires,**
- (b) store scrap tires such that water does not accumulate in scrap tires or containers...tires shall be kept free of water at all times,**
- (c) within twenty-four hours of accepting scrap tires containing liquid, arrange for the application of a pesticide or larvicide, which is registered for use for mosquito control by the Ohio Department of Agriculture at no greater than 30-day intervals or as recommended by the manufacturer or formulator..."**

Improper storage of scrap tires poses several potential problems for the local residents, environment, and the emergency crews in the area. Scrap tires provide an optimal breeding ground for mosquitoes. Mosquitoes identified at tire piles in Ohio can carry St. Louis Encephalitis, La Crosse Encephalitis, Yellow fever, Dengue Fever and West Nile Virus.

Please be advised that pursuant to OAC Rule 3745-27-60(D), upon inspection and written notification Ohio EPA, or the Approved Health Department or Authorized Representative discover the existence of mosquito larvae at the premises, the owner or operator shall apply within twenty-four hours or the next business day a adulticide and larvicide which is registered for use for mosquito control by the Ohio Department of Agriculture. The application shall be according to the manufacturer's or formulator's recommendations. Records shall be kept at the facility indicating the trade name of the adulticide and larvicide, the date and time of application, and the name of the persons who applied the adulticide and larvicide.

Upon the receipt of this letter, the Foundation shall implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(C) and (D). The Foundation shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(D).

The Ohio Administrative Code (OAC) and Ohio Revised Code (ORC) specifically prohibit open dumping of solid waste. This letter serves to inform you that the solid wastes on your property must be removed for proper disposal. Scrap tires may be disposed of at a licensed scrap tire disposal facility and the solid waste in a licensed sanitary landfill. Transportation of scrap tires in amounts greater than ten (10) scrap tires must be conducted by an Ohio EPA registered scrap tire transporter.



Figure 1: Water and mosquito larvae found in tires



Figure 2: Scrap tire pile near the storage building on the south end of the property

2. There has still been no repair made to ground water monitoring well MW-5 which has been heavily damaged. The well seal no longer prevents contamination of samples and the ground water. Damage to the surface seals was also noted on well MW-3 which has been caused by erosion.

The Foundation needs to make repairs to the wells to prevent contamination of samples and the ground water. The owner/operator needs to have a well contractor or equivalent professional inspect and repair well MW-5. If well MW-5 is beyond repair then abandonment and replacement options need to be investigated and with Ohio EPA knowledge, consensus, and approval of those option(s) undertaken.

3. Rusty outer well casings on wells MW-1, MW-2, MW-3, and MW-4, and all need painting (suggest non-toxic, non-aerosol, and highly visible color). All wells need their individual well identification number clearly labeled on the outer casing. As a reminder, vegetative overgrowth needs to be removed or trimmed around each well for year round access. Erosion around well pads should be repaired whenever observed.

4. The Director's Final Findings & Orders for the Old River Valley Place of Nature Foundation effective December 31, 2002 have not been satisfied and assessment has not been initiated. Violations identified during the June 3, 2004, DDAGW inspection have not been adequately addressed. All seven (7) violations cited during the June 2, 2004-inspection remain.
5. During this inspection I did not observe any closure activities taking place at the Facility. There is still municipal solid waste and construction and demolition debris visible on the surface of the active landfill disposal area (ALDA), including but not limited to: wallboard, shingles, wood debris, bricks, and concrete, a boot, plastic bags, pieces of plastic, bottles and aluminum cans, a basketball, a plastic swing seats and slide, plastic toy, and a plush toy. As previously stated, the Foundation has not completed final closure therefore several areas of erosion were observed along the top and along the slope in the southern part of the ALDA. The fly ash has been eroded away exposing the waste beneath it.

In accordance with the Agreed Order for Judgment (Order) between the State of Ohio "Ohio EPA" and Old River Valley Place of Nature Foundation "Foundation" filed in Butler County Court of Common Pleas on March 9, 2007, the Foundation is in violation of said Order as the following items have not been addressed within the specified timeline of this Order.

6. *Section III. Satisfaction of Lawsuit and Effect of Order, No.7 states in part: "Within thirty (30) days after entry of the Order, Defendant Foundation agrees to forfeit to Plaintiff State of Ohio all non real estate assets including, but not limited to, cash, annuities, insurance policies, stock, stock options, stock funds, money market funds, and bank accounts of all types owned by Defendant Foundation".*

As of October 26, 2009, the Foundation has not forfeited to Plaintiff State of Ohio all non real estate assets including, but not limited to, cash, annuities, insurance policies, stock, stock options, stock funds, money market funds, and bank accounts of all types owned by the Foundation in violation of Order No. 7.

7. *Section III. Satisfaction of Lawsuit and Effect of Order, No.9 states in part: "Not later than April 30 of each year following entry of this Order, Defendant Foundation agrees to submit to Plaintiff State of Ohio income tax statements for the previous year, as well as a written inability-to-pay argument that specifically addresses financial reasons why injunctive relief cannot be performed and/or compliance costs cannot be paid. Plaintiff agrees to review the above documents submitted by Defendant Foundation to determine Defendant Foundation's inability to pay. The ability-to-pay analysis will take into consideration the estimated cost for closure and post-closure care at Defendant Foundation's Landfill.*

As of October 26, 2009, the Foundation has failed to provide the additional income tax information that was noted on the income tax statements by the CPA to Plaintiff State of Ohio for the previous year, as well as their written inability-to-pay argument that specifically addresses financial reasons why injunctive relief cannot be performed and/or compliance costs cannot be paid in violation of Order No. 9. According to page 2 of Income Tax Form 990 Return of Organization Exempt from Income Tax Year 2007, line number 7, the Foundation indicates, "additional time is required to obtain financial information necessary to file a complete and accurate return." **Please provide this additional information for Ohio EPA's review.**

8. Section III. Satisfaction of Lawsuit and Effect of Order, No.11 states in part: "Defendant Foundation is authorized to accept donations, in the form of monetary donations or donations in kind, not to exceed ten thousand dollars (\$10,000) annually. Donations shall only be used for security, maintenance, upkeep and/or closure of Defendant Foundation's Landfill in accordance with Ohio Adm.Code 3745-27-11... Defendant Foundation shall submit to Plaintiff annually, no later than April 30, a report of all receipts and expenditures from the previous year, to include a purpose of each expenditure".

As of October 26, 2009, the Foundation has failed to provide a report to Plaintiff State of Ohio, of all receipts and expenditures from the previous year, to include a purpose of each expenditure in violation of Order No. 11.

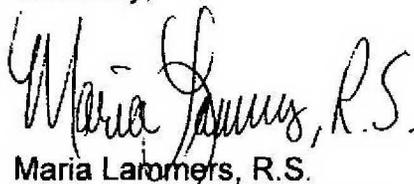
9. Section III. Satisfaction of Lawsuit and Effect of Order, No.5 states in part: "Defendant Foundation admits liability with respect to Counts One through Four of Plaintiff's Complaint. Closure of Defendant Foundation's Landfill shall be performed in accordance with Ohio Adm.Code 3745-27-11".

To date, the Foundation has not performed closure of the Facility in accordance with Ohio Administrative Code 3745-27-11 in violation of Order No. 5.

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.

Corrections of the aforementioned violations are expected to begin immediately upon receipt of this letter. If you have any questions or need any additional information, please call me at (937) 285-6046.

Sincerely,



Maria Lammers, R.S.

Environmental Specialist II

Division of Solid and Infectious Waste Management

Ec: Carl Mussenden, Ohio EPA, DSIWM-CMEU
John Cayton, AGO

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