



State of Ohio Environmental Protection Agency

**Northwest District Office**

347 North Dunbridge Road  
Bowling Green, OH 43402-9398

TELE: (419) 352-8461 FAX: (419) 352-8468  
www.epa.state.oh.us

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

Re: Lot 5 and Lot 6 Wynnscape Drive  
Lucas County  
DHWM, NWDO  
Complaint 2500  
Second Notice of Violation

July 11, 2008

CERTIFIED MAIL

Mr. Mike Bihn  
Bihn Excavating  
233 North Lallendorf Road  
Oregon, Ohio 43616

Dear Mr. Bihn:

On December 17, 2007, Gary Deutschman and I of the Ohio Environmental Protection Agency (Ohio EPA) investigated a complaint concerning Lot 5 (4901 Wynnscape Drive) and Lot 6 (4857 Wynnscape Drive), Oregon, Ohio. A letter was sent to Bihn Excavating (BE) located at 233 North Lallendorf Road, Oregon, Ohio, on January 3, 2008, that described the investigation. This investigation stemmed from a follow up to the Ohio EPA Division of Emergency and Remedial Response's (DERR's) investigation of a spill of unknown material.

The January 3, 2008, letter requested that BE submit sampling results of the unknown spilled material and additional information concerning the fill being used at Lot 5 and 6 to Ohio EPA. BE was given 30 days from receipt of this letter to respond to Ohio EPA. However, Ohio EPA did not receive a response from BE.

On March 7, 2008, Ohio EPA sent a Second Letter of Concern to BE. This letter requested the same information as the January 3, 2008, letter. Ohio EPA received a package from BE on March 19, 2008. BE submitted information on the N-VIRO dirt/topsoil that is located on Lot 5 and 6. However, BE failed to provide sampling results of the unknown spilled material.

Ohio EPA sent BE a Notice of Violation (NOV) on June 4, 2008. To date, BE has failed to respond to the June 4, 2008, NOV. **OHIO EPA MUST RECEIVE A RESPONSE FROM BE WITHIN 14 DAYS OF RECEIPT OF THIS LETTER. BE REMAINS IN VIOLATION OF THE FOLLOWING:**

**Violation:**

1. **Ohio Administrative Code (OAC) Rule 3745-52-11, Hazardous Waste Determination:**  
"Any person who generates a waste, as defined in rule 3745-51-02 of the Administrative Code, must determine if that waste is a hazardous waste..."

BE failed to provide sampling results from the unknown spilled material to Ohio EPA after being requested on the following dates: when Ohio EPA returned to the site on December 28, 2007; in a letter dated January 3, 2008; in a phone conversation on February 11, 2008; in a letter dated March 7, 2008; in a phone conversation on March 10, 2008; in a phone conversation on March 12, 2008; and in a letter dated June 4, 2008.

In order to abate this violation, BE must immediately submit analytical results to Ohio EPA **within 14 days of receipt of this letter.**

During the inspection on December 17, 2007, BE stated that the unknown spilled material was cleaned up, sampled, the results showed it was non-hazardous waste, and it was disposed of in a landfill.

During a phone conversation on March 10, 2008, BE claimed that the unknown spilled material was sampled, the results showed the waste was a non-hazardous waste, and the waste was left on the property. However, these analytical results cannot be found since BE repainted the main office and all files have been relocated to boxes.

If BE cannot find the results to be sent to Ohio EPA **within 14 days of receipt of this letter**, then BE must sample the waste pile to determine if the unknown waste is considered hazardous in accordance with OAC Rule 3745-52-11.

In order for BE to determine whether the waste pile of the unknown spilled material exhibits any hazardous waste characteristics, **BE must obtain a chemical analysis of a representative sample of the waste.** BE will need to contract the services of an environmental laboratory to analyze this material. BE must determine if the unknown spilled material exhibits a characteristic of a hazardous waste as described in OAC Rule 3745-51-20.

In order for BE to obtain a representative sample of the waste pile, more than one grab sample will likely be needed. BE should refer to US EPA's August 2002 document titled *RCRA Waste Sampling Draft Technical Guidance: Planning, Implementation, and Assessment* to help determine how many samples will be needed. The American Society for Testing and Materials (ASTM) also has a document that BE may find useful. It is titled ASTM D6009 - 96(2006) *Standard Guide for Sampling Waste Piles*. Ohio EPA recommends that BE discuss the sampling plan with the Agency prior to sampling the waste pile to ensure that a representative amount of waste will be analyzed.

In order to abate this violation, BE must submit the analytical results from the sampling event of the spill residue pile.

Please notify me at least five days prior to taking the sample(s) so that I may be present.

Additionally, if the analytical results show the spill residue material is characteristically hazardous waste, BE must immediately manage the hazardous waste in accordance with the hazardous waste laws/regulations (e.g., containerizing the waste pile, labeling the container(s) appropriately, arranging for the proper off-site management of the hazardous waste, etc.).

Mr. Mike Bihn  
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Furthermore, if the spill residue is determined to be a hazardous waste, I will determine the status of your compliance with other hazardous waste laws in a separate letter.

Please note that Ohio EPA considers these violations serious in nature and the company's failure to respond to this and past letters may result in referral of BE's violation to our Central Office Enforcement Section for consideration of escalated enforcement.

Should you have any questions or if I can be of assistance, please contact me at (419) 373-3065. Please send all requested information to Ohio EPA, Northwest District Office, Attn: Kara Reynolds, 347 North Dunbridge Road, Bowling Green, Ohio 43402.

Sincerely,

*Kara Reynolds*

Kara Reynolds  
Environmental Specialist  
Division of Hazardous Waste Management

/lir

pc: Colleen Weaver, DHWM, NWDO  
Kara Reynolds, DHWM, NWDO  
Cindy Lohrbach, DHWM, NWDO  
DHWM, NWDO Lucas County File: Bihn Excavating )

**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.

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Sent To  
 Mike Bihn - Bihn Excavating  
 Street, Apt. No. or PO Box No. 233 NORTH LALLENDORF ROAD  
 City, State, ZIP+4  
 OREGON OHIO 43616

PS Form 3800, August 2006 See Reverse for Instructions

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1. Article Addressed to:  
 MR. Mike Bihn  
 Bihn Excavating  
 233 NORTH LALLENDORF ROAD  
 Oregon, Ohio 43616

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 [Signature]

Agent  
 Addressee

B. Received by (Printed Name)  
 Danielle Bihn

C. Date of Delivery  
 7/23/08

D. Is delivery address different from item 1?  Yes  
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~~233 N.~~ P.O. Box 167665  
 Oregon, OH 43616

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