



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 Korleski, Director

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

**CERTIFIED MAIL  
7006 0100 0004 1318 4320**

June 4, 2008

Mr. Mike Bihn  
Bihn Excavating  
233 North Lallendorf Road  
Oregon, OH 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 has failed to provide sampling results of the unknown spilled material. This failure to provide Ohio EPA with the requested information is viewed as noncompliance with the rule and the resulting violation is cited below.

**Violation:**

- 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..."

Mr. Mike Bihn  
June 4, 2008  
Page 2

After being requested several times since January 2008, BE failed to provide sampling results from the unknown spilled material to Ohio EPA.

In order to abate this violation, BE must immediately submit analytical results to Ohio EPA **within 30 days of receipt of this letter.**

BE claims that the unknown spilled material was sampled and the results show the waste is a non-hazardous waste. Therefore, according to BE, the waste was left on the property. However, these 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 30 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.). Furthermore, if the spill residue is determined to be a hazardous waste, I will determine the status of your compliance in a separate letter.

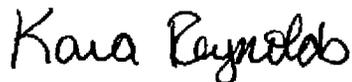
Please note that Ohio EPA considers these violations serious in nature and the company's failure to respond to this and past letters may result in referral of BE's violation to our Central Office Enforcement Section for consideration of escalated enforcement.

Mr. Mike Bihn  
June 4, 2008  
Page 3

Ohio EPA will issue an EPA ID number to track our inspection activity at BE. BE cannot use this number for manifesting hazardous waste shipments. If BE wants to use an EPA ID number for manifesting and other hazardous waste, used oil or universal waste activities, BE must complete and submit a Notification of Regulated Waste Activity form (EPA Form 9029 (Rev. 11/2002)) to Ohio EPA. This form is available on our Web page at <http://www.epa.state.oh.us/dhwm/notiform.html> or BE can call the Division of Hazardous Waste Management, Central Office, RIS at (614) 644-2977 and a copy will be sent through the mail.

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  
Environmental Specialist  
Division of Hazardous Waste Management

/csi

Enclosures

cc: Colleen Weaver, DHWM, NWDO  
Kara Reynolds, DHWM, NWDO  
Cindy Lohrbach, DHWM, NWDO  
DHWM, NWDO Lucas County File: Lucas County General 2005-

**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.

0254 87ET 4000 0070 9000

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$ .42
Certified Fee	2.70
Return Receipt Fee (Endorsement Required)	2.20
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 5.32</b>

Postmark Here  
 JUN 5 2008  
 GREENSBORO, NC  
 BIHN/KARA R.

Sent To  
 BIHN EXCAVATING  
 Street, Apt. No., or PO Box No. 233 NORTH LALLENDORF RD  
 City, State, ZIP+4 OREGON OH 43616

PS Form 3800, June 2002 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MR MIKE BIHN  
 BIHN EXCAVATING  
 233 NORTH LALLENDORF RD  
 OREGON OH 43616

DHWM/Kara R./csl

2. Article No. 0

PS F

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Addressee

B. Received by (Printed Name) Mike Kara

C. Date of Delivery 6/9/08

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No  
 P.O. BOX 167665  
 OREGON, OH 43616

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

102595-02-M-1540