



**Environmental
Protection Agency**

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

December 5, 2011

**RE: MUSKINGUM COUNTY
SITE – BURLEY CLAY
NOV**

Burley Clay Products
Attn.: Peter Petratsas
455 Gordon Street
Roseville, Ohio 43777

Dear Mr. Petratsas:

On November 17, 2011, the Ohio Environmental Protection Agency (Ohio EPA) met with Klemm Ungemach regarding the solid waste management practices currently being employed at Burley Clay Products in Roseville, Ohio. It was noted that all clay wastes were being recycled and no additional waste was being placed in the historic fill area behind the facility. As such, the changes in waste management implemented in late 2009 appear to be in compliance with Ohio regulations with respect to all new process clay wastes.

In addition, on April 15, 2010, Ohio EPA received a letter from Christopher Ward of Calfee, Halter, & Griswold LLP describing past waste management practices at the facility. Mr. Ward's letter also argues Ohio EPA's contention that the historic fill operations constitute violations of Ohio rules and regulations. Mr. Ward contends the material is not "unwanted" and has been utilized to bring the property up to a consistent grade and should be considered "clean hard fill" as that material is characterized in Ohio Administrative Code (OAC) Rule 3745-400-05.

Please be advised that under OAC Rule 3745-400-01 (E), clean hard fill is defined as "construction and demolition debris which consists only of..." The clay waste materials produced by Burley Clay are manufacturing wastes, not construction or demolition debris. As such, the rules governing clean hard fill are not applicable to this material. The use of a solid waste as fill material could only be approved through an Integrated Alternative Waste Management Program (IAWMP), as detailed by OAC Rule 3745-27-05(A)(4). Ohio EPA has no record of Burley Clay applying for or receiving an IAWMP for the clay waste materials.

As such, Ohio EPA still considers the historic fill area as open dumping of a solid waste.

Burley Clay Products and ACCCO remain 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:

ORC 3734.03 - No person shall dispose of solid wastes by open dumping or open burning.

OAC 3745-27-05(C) states:

OAC 3745-27-05(C) - No person shall conduct, permit, or allow open dumping.

BURLEY CLAY
DECEMBER 5, 2011
PAGE 2

Ohio EPA recognizes the value of the evaluation and analysis provided in your April 15, 2010, correspondence. Please be advised, however, that because Ohio EPA contends that this material is solid waste, the only remedy expressly acceptable under the current rules and regulations is removal of the waste material. Any remedy other than removal of waste (i.e., on-site closure) could only be approved through a negotiated settlement agreement with Ohio EPA.

Please respond to this correspondence within 14 days of receipt. Your response should include details of your actions taken to deal with the historic open dumpsite on your property.

If you have any questions, please feel free to contact me at this office. You can reach me either by mail or by calling me at (740) 380-5428.

Sincerely,



Mark Mansfield.
Environmental Specialist II
Division of Materials and Waste Management

MM/jg

cc: Klemm Ungemach, ACCCO
451 Gordon Street
Roseville, Ohio 43777
cc: Christopher Ward, Calfee, Halter & Griswold LLP
1100 Fifth Third Center
21 East State Street
Columbus, Ohio 43215-4243