Ohio Environmental Protection Agency
John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

June 28, 2012

RE: **ASHTABULA IRON AND METAL**
NOTICE OF VIOLATION

CERTIFIED MAIL 7011 0470 0002 3496 4512

Hercules LLC
c/o ACFB Incorporated
2300 BP America Building
200 Public Square
Cleveland, OH 44114-2378

CERTIFIED MAIL 7011 0470 0002 3496 4529

Ashtabula Salvage LLC
c/o ACFB, Incorporated
2300 BP America Building
200 Public Square
Cleveland, OH 44114-2378

CERTIFIED MAIL 7011 0470 0002 3496 4536

Mark A. Bronstein
3901 Hamilton Avenue
Cleveland, OH 44114

CERTIFIED MAIL 7011 0470 0002 3496 4543

James C. McSherry
McSherry & Co., LPA
178 East Washington Street
Chagrin Falls, OH 44022

DELIVERY CONFIRMATION

A.I.M. Recycling & Demolition
P. O. Box 800
Ashtabula, OH 44004

DELIVERY CONFIRMATION

Mr. Brett Muckle
215 Manorbrook Drive
Chagrin Falls, OH 44022 *and or*

DELIVERY CONFIRMATION

Mr. Brett Muckle
116 Fernwood Road
Chagrin Falls, OH 44022

Dear Owner(s)/Operator(s):

On April 27, 2012 and April 28, 2012, the City of Ashtabula Fire Department and Ohio Environmental Protection Agency (Ohio EPA) conducted a comprehensive inspection of property formally known as Ashtabula Iron and Metal, located at the northeast corner of West Avenue and West 30th Street ("Property"). Addresses listed for the Property are 1015 W. 30th, and 2710 West Avenue in Ashtabula, Ohio 44004. On April 27, 2012, Ron Pristera, Fire Chief, and his staff with Ashtabula City Fire Department, and Rich Kolosionek, of Ohio EPA Division of Air Pollution Control (DAPC), Ed D'Amato, and I, of Ohio EPA Division of Materials and Waste Management (DMWM), were present for the inspection. No one representing the owner(s) who possess a deed or title to the Property, and/or the operator(s) who have had or currently have access to the Property and are moving material or waste around in the course of business was present during the inspection. However, access was obtained via search warrant.

On May 22, 2012, Ron Deemer, Ashtabula City Assistant Fire Chief, Randy Ohlemacher and Eric Shultz, of Ohio EPA Division of Emergency and Remedial Response, Ed D'Amato, Frank Zingales, Paul Dolensky, Jarnal Singh, and I, of Ohio DMWM conducted an inspection of the facility. Sanford Kahn, appointed receiver, granted Ohio EPA access. The purpose of the inspection was to determine compliance with Ohio's solid waste, construction and demolition debris, and scrap tire laws and regulations. There may be additional letters from this office pertaining to hazardous waste and air pollution control laws and regulations.

The following violations were observed at the property:

1. **Ohio Revised Code Section 3734.02(C)** states, in part, that "*. . . no person shall establish a new solid waste facility or infectious waste treatment facility, or modify an existing solid waste facility or infectious waste treatment facility without submitting an application for a permit with accompanying detail plans, specifications, and information regarding the facility and method of operation and receiving a permit issued by the director. . . .*"

   ORC Section 3734.03 states, in part, "*No person shall dispose of solid wastes by open burning or open dumping. . . .*"

   Ohio Administrative Code (OAC) Rule 3745-27-05(C) states, in part, "*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.*"

   ORC Section 3734.05(A)(1) states, in part, "*. . . no person shall operate or maintain a solid waste facility without a license issued under this division by the board of health of the health district in which the facility is located. . . .*"

   OAC Rule 3745-37-01(A) states that "*No person shall conduct municipal solid waste landfill, industrial solid waste landfill, residual solid waste landfill, compost facility, transfer facility, infectious waste treatment facility, or solid waste incineration facility operation without possessing a separate valid license for each such operation, as required by Chapter 3734. of the Revised Code and the Administrative Code rules adopted thereunder. Each license shall be obtained from the board of health in the health district in which the facility is located, or by the director, if the director has assumed the licensing function for that health district.*"

The owner(s)/operator(s) are in violation of Ohio's statutes and rules due to establishing, maintaining and/or operating a solid waste facility without obtaining a license and permit from Ohio EPA. Ohio EPA observed bags of trash, pallets, plastic liners and containers, scrap tires, and miscellaneous waste strewn around the property. Furthermore, it was difficult to differentiate the appearance of assets being stored from waste being illegally disposed outside of the buildings.

Furthermore, the owner(s)/operator(s) are prohibited from accepting and disposing of solid waste at the Property.

The owners/operators are responsible for cleanup and appropriate disposal of at least 121,950 scrap tires, and bags of trash miscellaneous solid waste. The owners/operators must remove all solid waste open dumped at the Property and properly dispose of the solid waste at a licensed solid waste disposal facility.

2. **ORC 3714.051** states, in part, *"... no person shall establish a new construction and demolition debris facility without first obtaining a permit to install issued by the board of health of the health district in which the facility is or is to be located ..."*

   OAC Rule 3745-400-04(B) states that "*No person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code.*"

   The owners/operators are in violation of Ohio's statute and rule, due to illegal disposal of construction and demolition debris (C&DD) at the Property. The owners/operators are prohibited from accepting and disposing of C&DD at the Property. Furthermore, the owners/operators are responsible for cleanup and appropriate disposal of pipes, railroad ties, insulation foam, dimensional lumber and hard fill illegally disposed at this Property. If the C&DD can be segregated, the owner(s)/operator(s) must remove all C&DD and properly dispose of all C&DD material at an appropriate licensed C&DD facility or if unable to segregate the C&DD, the owner(s)/operator(s) must dispose of the commingled solid waste and C&DD at a licensed solid waste disposal facility.

3. **OAC 3745-27-60(B)(7)** states that *"[t]he following requirements apply to storage of scrap tires outside of portable containers, trucks, semi-trailers, a building or covered structure: (a) Individual scrap tire storage piles shall be no greater than two thousand five hundred square feet in basal area and ... [t]he two thousand five hundred square feet basal area shall apply to multiple racks and small scrap tire piles not separated from other racks, piles, or structures by a fire break at least fifty-six feet wide. The basal area of the scrap tire storage pile shall include the area of the tire piles, racks, and the area of any walkway or other open areas that*

do not meet the definition of a fire break as defined in rule 3745-27-01 of the Administrative Code; (b) Scrap tire storage piles shall not exceed eight feet in height; (c) Scrap tire storage piles of five hundred scrap tires or less shall be at least twenty-five feet away from all buildings and other scrap tire storage piles; (d) Scrap tire storage piles of more than five hundred scrap tires ... shall be separated from other scrap tire storage piles and from buildings and structures by a fire break with a width equal to or greater than fifty-six feet in accordance with the fire break chart in appendix I to rule 3745-27-65 of the Administrative Code; (e) Sufficient fire breaks shall be maintained to allow access of emergency vehicles at all times to, around, and between the scrap tire storage piles and areas."

OAC 3745-27-60(B)(8) states, in part, that *"[t]he following requirements apply to the storage of scrap tires in a building or covered structure: (a) Individual scrap tire storage piles shall not exceed two thousand five hundred feet in basal area ... [t]he two thousand five hundred square feet basal area shall apply to multiple racks not separated from other racks, piles, or structures by at least eight feet; (b) The width of aisles between scrap tire storage piles shall be at least eight feet; (c) The clearance from the top of scrap tire storage piles to sprinkler deflectors shall be at least three feet; (d) Clearances in all directions from the top of scrap tire storage piles to roof structures shall be at least three feet; (e) Clearances from the top of scrap tire storage piles to unit heaters, radiant space heaters, duct furnaces, and flues shall be at least three feet in all directions, and shall be in accordance with the clearance distances recommended by the equipment manufacturer."*

The owners/operators are in violation of Ohio's scrap tire rules. During the inspection, Ohio EPA observed at least 121,950 scrap tires dumped on the Property. The bulk of the scrap tires stored in a massive pile at the middle of the property, and several large and small piles scattered around the property. There were neither fire lanes nor fire breaks around the massive scrap tire pile. The owner(s)/operator(s) need to comply with the general scrap tire storage requirements by limiting the size of the scrap tire piles and by creating adequate fire lanes and reducing the potential for a tire fire prior to removal.

4. **OAC 3745-27-60(C)(1)** states, in part, that *"[a]nyone storing scrap tires shall maintain mosquito control as follows: (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 as mosquito control by the Ohio Department of Agriculture.*

The owner(s)/operator(s) of the Property are in violation of Ohio's scrap tire rules for failure to control mosquitoes. Scrap tires were holding water that could potentially breed mosquitoes. The presence of mosquitoes constitutes a nuisance and a hazard to public health and safety. Therefore, the owner(s)/operator(s) must keep the scrap tires dry and maintain mosquito control until the scrap tires have been removed and properly disposed at an appropriate licensed scrap tire facility.

5. **ORC Section 3734.11(A)** states that "*No person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code.*"

   The owner(s)/operator(s) are in violation of this statute. As described above, the owner(s)/operator(s) have violated ORC Section 3734.02(C), ORC Section 3734.03, OAC Rule 3745-27-05(C), ORC Section 3734.05(A)(1), OAC Rule 3745-37-01(A), OAC 3745-27-60(B)(7), OAC 3745-27-60(B)(8), and OAC 3745-27-60(C)(1).

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 Lakeside Industrial Park and any other owners, operators and/or tenants of the Property from responsibility under Chapters 3704, 3714, 3734, or 6111 of the Ohio Revised Code or under the Federal Clean Water or Comprehensive Environmental Response, Compensation, and Liability Acts for remedying conditions resulting from any release of contaminants to the environment.

The owner(s)/operator(s) need to immediately take the necessary measures to return to compliance with Ohio's environmental laws. Within 14 days of receipt of this letter, the owner(s)/operator(s) are requested to provide documentation to this office including the steps taken to abate the violations cited above. Documentation of steps taken to return to compliance includes written correspondence, updated policies, and photographs, as appropriate, and may be submitted via the postal service or electronically to colum.mckenna@epa.ohio.gov.

Please be advised that violations cited above will continue until the violations have been properly abated. Failure to comply with Chapter 3734 (or 3714 for C&DD) of the Ohio Revised Code and rules promulgated thereunder may result in a civil penalty of up to $10,000 per day for each violation. It is imperative that you return to compliance. If circumstances delay the abatement of violations, the owner(s)/operator(s) are requested to submit written correspondence of the steps that will be taken by date certain to attain compliance.

If you have any questions, please contact me by telephone at (330) 963-1268 or by e-mail at colum.mckenna@epa.ohio.gov.

Sincerely,

Colum McKenna
Environmental Specialist
Division of Materials and Waste Management

CM/cl

cc: Frank Zingales, DMWM/NEDO
Rich Kolosionek, DAPC/NEDO
Ron Pristera, Ashtabula City Fire Department
Terry Collett, Ashtabula City Health Department
File: [Sowers/COUN/Ashtabula Iron & Metal/COR/04]