

**Environmental
Protection Agency**

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

Re: City of Sandusky/Tricor Marina
Hazardous Waste
Erie County
NOV

March 29, 2012

Mr. Todd Roth, Director
Planning, Engineering and Development
City of Sandusky
222 Meigs Street
Sandusky, Ohio 44870

Ms. Kula Hoty Lynch, Corporate Counsel
Hoty Enterprises, Inc.
4918 Milan Road
Sandusky, Ohio 44870

Dear Mr. Roth and Ms. Lynch:

The City of Sandusky (COS) is in the process of developing Tricor Marina for the Bayfront Paper District Redevelopment Project. As part of this development, the COS had required that Hoty Commercial Builder, Ltd. (Hoty) conduct additional dredging at the site of the marina. The dredge material from this project (approximately 3000 cubic yards) was placed onto barges, transferred into trucks, then stockpiled at Son Rise Marina, 1531 First Street, Sandusky, Ohio. On December 15, 2011, sampling was conducted of the stockpiled dredge material to determine if this material contained chemicals of concern above regulatory limits. The COS submitted to Ohio EPA analytical data from the sampling and analysis of material dredged from Tricor Marina for the Bayfront Paper District Redevelopment Project (Tricor Dredging Project). The data was dated January 17, 2012, and provided to Brian Patterson of the Division of Environmental Response and Revitalization (DERR) for review.

On January 27, 2012, Mr. Patterson requested the assistance of the Division of Materials and Waste Management (DMWM) in reviewing the data to determine if the waste generated by the Tricor Dredging Project was a hazardous waste. In addition, DMWM, requested the assistance of Erik Hagen, DERR, Central Office in the review of this data as well.

Ohio EPA's conclusion from the review of the sampling and analysis data submitted by the COS is that this data is inconclusive. The data revealed high total levels of lead in all eight samples collected (six samples with two duplicates) which is cause for concern.

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The regulatory level for lead is 5.0 mg/L based on the Toxicity Characteristic and Leaching Procedure (TCLP) Test (SW-846 Methods 1311 TCLP, 6010 for Metals). The TCLP test was not conducted on this set of samples. Only the total constituent levels were assessed (Method 6010). In addition, for many of the samples analyzed the percent moisture was significantly elevated as were the detection levels for these constituents. Likewise the COS and Hoty did not analyze for all the potential hazardous characteristics (i.e. semi-volatile organic compounds). The narrative of the data package stated the samples were taken at varying depths, however, based on Table 1 of the January 17, 2012, data package all eight samples were taken at 0-1 feet (effectively surface samples). Surface sampling alone is not a representative sampling of this waste stream. Based on these factors, this set of data is inconclusive to determine whether the waste generated is a hazardous waste.

Based on this information, I found the following violation of Ohio's hazardous waste laws listed below. The COS and Hoty are co-generators of this waste as defined in the U.S. EPA Federal Register 40 CFR Parts 260 (III. Generator Responsibilities and Amendment to 40 CFR 260.10). As co-generators both parties are responsible for the abatement and subsequent return to compliance for the violation listed below.

The COS and Hoty 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 COS and Hoty are requested to provide documentation to this office including the steps taken to abate the violation cited below. 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 amber.hicks@epa.ohio.gov.

1. Waste Evaluation.
OAC Rule 3745-52-11

Any person who generates a waste must determine if that waste is a hazardous waste in accordance with the criteria for hazardous waste as set forth in Chapter 3745-51 of the Administrative Code.

The COS and Hoty failed to evaluate the waste dredge material to determine if it was a hazardous waste.

The COS and Hoty must immediately conduct additional sampling and analysis of the Tricor Dredging Project waste material to determine whether this waste contains hazardous characteristics and is thus a hazardous waste.

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The COS and Hoty must properly evaluate this waste as defined in OAC Rule 3745-52-11 to determine whether this waste is a hazardous waste and then likewise manage and dispose of accordingly.

To properly evaluate this waste stream, the COS and Hoty must collect a minimum of eighteen (18) additional samples from the Tricor Dredging Project waste as outlined below:

Stockpile 1

A minimum of ten (10) samples must be collected from the larger "pile" (Stockpile SP1). Of these 10 samples, six (6) must be collected and analyzed to determine the **TCLP concentrations** and also the **total concentrations** of the Resource Conservation and Recovery Act (RCRA) **metals, semi-volatile organic compounds (SVOCs) and volatile organic compounds (VOCs)** as listed in OAC Rule 3745-51-24 following the methods as outlined in U.S. EPA's SW-846 (methods 1311 TCLP and 6010 for metals including 7470-7471 for mercury; methods 1311 TCLP and 8270C for SVOCs; and methods 1311 TCLP and 8260B VOCs, respectively). The remaining four (4) samples collected from Stockpile 1 may be analyzed for total concentrations of metals, SVOCs and VOCs (6010, 8270C, 8260B) only. However, be advised that Ohio EPA may require a full TCLP analysis of the remaining four samples if these levels are at or near the regulatory level.

Stockpile 2

A minimum of eight (8) samples must be collected from the smaller "pile" (Stockpile SP2). Of these 8 samples, four (4) must be collected and analyzed to determine the **TCLP concentrations** and also the **total concentrations** of the RCRA **metals, semi-volatile organic compounds (SVOCs) and volatile organic compounds (VOCs)** as listed in OAC Rule 3745-51-24 following the methods as outlined in U.S. EPA's SW-846 (methods 1311 TCLP and 6010 for metals including 7470-7471 for mercury; methods 1311 TCLP and 8270C for SVOCs; and methods 1311 TCLP and 8260B VOCs, respectively). The remaining four (4) samples collected from Stockpile 2 may be analyzed for total concentrations of metals, SVOCs and VOCs (6010, 8270C, 8260B) only. However, be advised that Ohio EPA may require a full TCLP analysis of the remaining four samples if these levels are at or near the regulatory level.

The sampling conducted must be representative of the waste in question which entails a three dimensional picture of the waste. Surface samples alone do not represent an accurate 3-D representation of the waste.

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The samples must be taken at varying depths – surface, middle, bottom including samples collected at the interface between the native material (soil already located at Son Rise Marina) and the dredge material from the Tricor Marina project which was re-located and stockpiled at this location. In addition, samples must be collected at various locations throughout the stockpiles (i.e. interior and edges).

On March 19, 2012, via telephone I spoke with Mr. Roth. Mr. Roth stated that no additional waste would be generated from this project and that the waste at Son Rise Marina is the extent of the waste in question (no other waste was generated during this dredging event and placed at another location). In addition, I informed Mr. Roth that the sampling data was inclusive and Ohio EPA would be requiring additional sampling.

To abate this violation, please submit to me a sampling and analysis plan which outlines your intended sampling activities which includes the guidance above. In addition, please include in this plan a sketch of the stockpiles including location and quantity of each stockpile and the area in question. Please include a brief history of the site (Son Rise Marina) indicating what was present/what activities occurred at Son Rise Marina before the stockpiled dredge material was placed at this location.

When sampling is performed, please notify me at least seven days prior to taking the samples so that I or an Ohio EPA representative may be present.

If based on sampling the waste is hazardous, I will determine the status of your compliance with other hazardous waste laws and notify you of my findings in a separate letter.

Please be advised that the violation cited above will continue until the violation has been properly abated. Failure to comply with Chapter 3734. 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 the violation, the COS and Hoty are requested to submit written correspondence of the steps that will be taken by date certain to attain compliance.

Ohio EPA will issue an EPA ID number to track our compliance activities at Son Rise Marina. You cannot use this number for manifesting hazardous waste shipments. If you want to use an EPA ID number for manifesting and other hazardous waste, used oil or universal waste activities, you must complete and submit a Notification of Regulated Waste Activity form (*EPA Form 9029 (Rev. 9/2010)*) to Ohio EPA. This form is available on our Web page at <http://www.epa.state.oh.us/Default.aspx?tabid=3915> or you can call me or the Division of Materials and Waste Management, Central Office at (614) 644-2621 and we will mail you a copy.

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Please address all correspondence via the postal service to Amber Hicks, Ohio EPA, 347 N. Dunbridge Road, Bowling Green, Ohio 43402 or electronically to amber.hicks@epa.ohio.gov. Should you have any questions, please feel free to call me at (419) 373-3082 or email me at amber.hicks@epa.ohio.gov.

You can find copies of the rules and other information on the division's web page at <http://www.epa.ohio.gov/dmwm.aspx>.

Sincerely,



Amber M. Hicks
Division of Materials and Waste Management

/lr

pc: Cindy Lohrbach, DMWM, NWDO
Colleen Weaver, DMWM, NWDO

ec: Amber Hicks, DMWM, NWDO
John Pasquarette, DMWM, NWDO
Colleen Weaver, DMWM, NWDO
Brian Patterson, DERR, NWDO
Elizabeth Wick, DSW, NWDO
Erik Hagen, DERR, CO
Eric Getz, DO, NWDO

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.