



Environmental
Protection Agency

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

Re: 16270 CR 8, Montpelier
Williams County
Open Dumping – Case #11-22

May 10, 2011

Mr. Dustin Schlachter
S&S Directional Boring
1116 County Road 17
Bryan, Ohio 43506

Dear Mr. Schlachter:

On March 2, 2011, the Ohio Environmental Protection Agency (Ohio EPA), Northwest District Office (NWDO) received a complaint regarding the property that is owned by Schlachter Investments LLC, at 16270 County Road 8, Montpelier, Ohio, Williams County (Site). The Site is identified as Parcel # 093-280-09-014.001 by the Williams County Auditor. The complainant alleged that open dumping of solid waste and illegal disposal of construction and demolition debris (C&DD) is taking place at the Site. The complainant alleged that current and previous tenants are dumping solid waste and C&DD around and into a pond at the Site. Furthermore, the complainant has alleged that you have been made aware of the activity and have failed to address it or even gone as far as to condone it. As owner of the Site, you are responsible for the disposal activities occurring and for any clean-up activities.

On March 3, 2011, Ohio EPA visited the Site to investigate the complaint. No one was present at the time of the inspection. I, along with Ms. Mary Wright, observed miscellaneous solid waste and C&DD deposited on the ground near the bank of the pond (see enclosed photos). Ohio EPA then visited the previous tenants, Jerry and Loretta Tipton, to discuss the complaint. Ms. Tipton indicated that solid waste and C&DD had been taken out to the Site for numerous months by Mr. Tipton. She further indicated that the material was meant to be burnt for disposal. On March 4, 2011, I had a telephone conversation with Mr. Tipton regarding the Site. He indicated that he was taking material out to the Site. I explained to him Ohio's rules regulating disposal of solid waste and C&DD. I instructed him to immediately stop taking material out to the Site and to not burn the material that is currently at the Site. You were then made aware of the Ohio EPA investigation on March 4, 2011. You were made aware of the rules governing the disposal of solid waste and C&DD during our telephone call. You were also made aware of the responsibility you have ensuring the Site is properly cleaned up as the Site owner.

SOLID WASTE:

Solid waste is defined in Ohio Administrative Code (OAC) Rule 3745-27-01(S)(23) as (in pertinent part):

"Solid waste" means such unwanted residual solid or semisolid material, including but not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt and debris, as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition

operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, . . . , and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. Solid waste does not include any material that is an infectious waste or a hazardous waste.

The final deposition of solid wastes **on or into** the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code, and Chapters 3745-27, 3745-29, 3745-30, and 3745-37 of the Administrative Code constitutes **open dumping**. OAC Rule 3745-27-05(C) states, "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."

The owner of the identified Site above is in violation of the following rules and laws:

1. OAC Rule 3745-27-05(C):

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.

Open dumping is defined in OAC Rule 3745-27-01(O)(4) as (in pertinent part):

"Open dumping" means the following: (a) The deposition of solid wastes, other than scrap tires, into waters of the state, and also means the final deposition of solid wastes on or into the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code, and Chapters 3745-27, 3745-29, 3745-30, and 3745-37 of the Administrative Code.

2. Ohio Revised Code (ORC) Chapter 3734.03:

*No person shall dispose of solid waste by open burning or **open dumping**, except as authorized by the director of environmental protection in rules adopted in accordance with division (V) of section 3734.01, section 3734.02, or sections 3734.70 to 3734.73 of the Revised Code and except for burying or burning the body of a dead animal as authorized by section 941.14 of the Revised Code. No person shall dispose of treated or untreated infectious waste by open burning or open dumping.*

3. OAC Rule 3745-27-02(A) (in pertinent part):

. . . no person shall establish or modify a solid waste facility. . . without obtaining a permit to install issued by the director . . .

4. ORC Chapter 3734.02(C) (in pertinent part):
... no person shall establish a new solid waste facility, or modify an existing solid waste 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 . . .

5. OAC Rule 3745-37-01(A) (in pertinent part):
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 operations 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 . . .

6. ORC Chapter 3734.05(A)(1) (in pertinent 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 or by the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code . . .

The owner/operator of the Site is in violation of the above rules and laws for establishing solid waste facility without the necessary permits and licenses and for conducting or allowing the open dumping of solid waste. These violations will continue until all solid waste open dumped at this Site is removed and properly disposed at a solid waste facility.

CONSTRUCTION AND DEMOLITION DEBRIS:

Construction and demolition debris is defined in Ohio Administrative Code (OAC) Rule 3745-400-01(F) as (in pertinent part):

"Construction and demolition debris" or "debris" means those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways. . . .

For the purpose of this definition, "materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure," are those structural and functional materials comprising the structure and surrounding site improvements, such as brick, concrete and other masonry materials, stone, glass, wall coverings, plaster, drywall, framing and finishing lumber, roofing materials, plumbing fixtures, heating equipment, electrical wiring and components containing no hazardous fluids or refrigerants, insulation, wall-to-wall carpeting, asphaltic substances, metals incidental to any of the above, and weathered railroad ties and utility poles. . . .

The placement of C&DD on the ground at this Site is a violation of the following rules and laws:

1. OAC 3745-37-01(C) (in pertinent part):
No person shall establish, modify, operate or maintain a construction and demolition debris facility without a construction and demolition debris facility license issued by the licensing authority . . .
2. Ohio Revised Code (ORC) § 3714.06(A) (in pertinent part):
No person shall establish, modify, operate, or maintain a construction and demolition debris facility without a construction and demolition debris facility installation and operation license. . .
3. OAC 3745-400-04(B):
*No person shall conduct or allow **illegal disposal** of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code.*

Illegal Disposal is defined in OAC 3745-400-01(S) as:

"Illegal disposal" means the disposal of construction and demolition debris at any place other than a construction and demolition debris disposal facility operated in accordance with Chapter 3714. of the Revised Code, and Chapters 3745-400 and 3745-37 of the Administrative Code, a solid waste disposal facility operated in accordance with Chapter 3745-27 of the Administrative Code, and licensed in accordance with Chapter 3745-37 of the Administrative Code, or as otherwise authorized by this Chapter.

4. OAC Rule 3745-400-05(C):
The person responsible for causing clean hard fill to be used in legitimate fill operations for construction purposes or to bring the site up to a consistent grade, on a site other than the site of generation, shall provide a written "Notice of Intent to Fill" to each licensing authority where the clean hard fill is to be placed. The Notice of Intent to Fill shall state the nature of the fill material, the site(s) to be filled, when filling will begin and end, and the telephone number of the notifier. The notification shall be received by each local licensing authority with sites to be filled, at least seven days prior to filling as required by division (F) of section 3714.13 of the Revised Code. The notifier shall provide a new Notice of Intent to Fill if there are any changes in the information required by this rule for notification.
5. ORC Chapter 3714.13(A):
No person shall violate any section of this chapter.
6. ORC Chapter 3714.13(B):
No person shall violate a rule adopted under this chapter.

Mr. Dustin Schlachter
May 10, 2011
Page 5

A violation of the above rules and laws for establishing a construction and demolition debris facility without the necessary permits and licenses, and for conducting or allowing the illegal disposal of construction and demolition debris has occurred. These violations will continue until all C&DD illegally disposed at this site is removed and properly disposed at a solid waste or C&DD facility.

Please ensure open dumping of solid waste and illegal disposal of C&DD ceases and will not occur at the Site. Failure to comply with OAC Chapter 3745-27 and OAC Chapter 3745-400 may result in escalated enforcement actions against you.

You indicated during our conversation that you will ensure the Site cleaned up. Please retain and submit receipts for proper disposal and any photo documentation you may have. Furthermore, Ohio EPA would like to be present for the excavation of a few test pits to ensure historical waste has not been deposited into the ground and used to fill in the pond. You can contact me at (419) 373-3079 to set up a date for observing the test pits. A written response should be submitted within 14 days of receipt of this correspondence to the following:

Ohio EPA - NWDO
Attn: Jeremy Scoles
347 N. Dunbridge Road
Bowling Green, Ohio 43402

This correspondence addressed specific observations only for the areas of the property that were inspected. Nothing present in, nor absent from this correspondence is intended to mean that no other violations existed at the property at the time of inspection.

Compliance with the requirements outlined in this letter, or the solid and infectious waste provisions contained in the Ohio Revised Code Chapter 3734 and the rules promulgated thereunder, does not relieve you from your obligations to comply with other applicable state and federal laws and regulations.

Sincerely,



Jeremy Scoles, RS
Environmental Specialist II
Division Materials and Waste Management

/l/r

Enclosure

pc: ~~File:DMWM-SW, Williams County, Dump Sites~~
Steve Long, Williams County Health Department
ec: Mike Reiser, Ohio EPA

