



Environmental
Protection Agency

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

July 30, 2012

RE: UPPER DECK LOUNGE
OHR 000 170 779
SUMMIT COUNTY
COMPLAINT 7546
NOV

John Thorton
Turkeyfoot Properties Company
294 W. Turkeyfoot Lake Road
Akron, OH 44319

Dear Mr. Thorton:

On July 18, 2012, I inspected Upper Deck Lounge at 357 W. Turkeyfoot Lake Road, New Franklin, Ohio 44319. The purpose of this was to investigate a complaint and to determine if this facility was in compliance with Ohio's hazardous waste, universal waste and used oil laws and rules as found in Chapter 3734 of the Ohio Revised Code (ORC) and Chapter 3745 of the Ohio Administrative Code (OAC).

The complaint alleged that lead-based paint was scraped off the building and that the paint chips were on the ground and getting into the adjacent Portage Lakes. The complainant said the paint chips had been tested and found to be positive for lead-based paint. No copies of lab results of this testing were provided with the complaint.

When I arrived on July 18th, there were some paint chips on the ground around the building and also by your solid waste dumpster. Please see the attached printout of photos showing some of these paint chips. I also collected a small jar of these paint chips.

Later that day and the next day we talked via telephone. You said the building was built in 1860 and that your family has been leasing it out since 1939. You paint it every four or five years and have been using latex paint for this for the last 30 or 40 years. You said there is no lead-based paint on the building as far as you know.

The following violation was found:

1. **OAC Rule 3745-52-11 – Hazardous waste determination.**

This rule requires that any person who generates a waste must determine if that waste is a hazardous waste. The following documents, which offer more information on this, were given during the inspection or are enclosed:

Identifying Your Hazardous Waste, 2010

<http://www.epa.ohio.gov/portals/41/sb/publications/identifyingwaste.pdf>

OAC 3745-51-21 to 24 characteristic hazardous waste

OAC 3745-51-31 listed hazardous waste

http://www.epa.ohio.gov/dhwm/laws_regs.aspx

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Use of Generator Knowledge in Complying with OAC 3745-52-11, 2005
<http://epa.ohio.gov/portals/32/pdf/GeneratorKnowledge6.pdf>

Upper Deck Lounge violated this rule by not determining if the waste paint chips removed from your building are a hazardous waste. Having over the limit for lead when tested by the TCLP test is the most likely way this waste could be hazardous waste as lead was a component of many paints in the past.

Please send me a letter documenting how you have determined whether or not this waste is a hazardous waste.

If you decide to have the waste tested, you can find local labs on the enclosed list titled: Waste Disposal and Recycling Companies in Northeast Ohio, 2011. Test data may also be useful if the complainant provides any results or other additional information in the future.

If you decide to apply knowledge of the hazardous characteristic of the waste in light of the materials or processes used, then your response letter should clearly explain how this was done. Documentation to submit would include such things as the type of paint that has been used on this building in the past and the approximate dates or number of times it has been scraped and/or painted in the past.

Please call me with any questions you have regarding this determination.

Even if not a hazardous waste, these paint chips are still a solid waste and need to be disposed properly. Therefore, you must, at a minimum, pick up the paint chips that are currently on the ground and dispose of them properly. I suggest any future scraping be done in such a manner to collect the chips for disposal. Using tarps on the ground for this is one method.

I also noticed (and is shown in one of the photos) that white paint was on the ground near the grease dumpster. This appeared to be from the cleanout of painting equipment. Such equipment needs to be cleaned out in such a manner as to avoid the waste getting on the ground.

You need to immediately take the necessary measures to return to compliance with Ohio's environmental laws. Within 14 days of receipt of this letter, you are requested to provide documentation to me including the steps taken to abate the violations cited above. Such documentation may include written correspondence, updated policies, and photographs, as appropriate.

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. If circumstances delay the abatement of violations, you are requested to submit written correspondence of the steps that will be taken by date certain to attain compliance.

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The following additional documents were given to Mary during the inspection:

Ohio's Universal Waste Rules: Are You Handling Used Lamps Correctly?, 2010
<http://www.epa.ohio.gov/portals/41/sb/publications/Lampcompliancechecklist.pdf>

Information from US EPA's website regarding lead in paint, dust and soil.
(Some of these rules are enforced by US EPA and not Ohio EPA.)

Other information and suggestions:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) provides compliance and pollution prevention assistance on environmental issues (including sources of funding) related to air, land, and water. They can be contacted at (800) 329-7518, or <http://www.epa.ohio.gov/Default.aspx?alias=www.epa.ohio.gov/ocapp>.
- ENERGY STAR is a government-backed program helping businesses and individuals protect the environment through superior energy efficiency. Their website is at: <http://www.energystar.gov/>.
- Ohio Bureau of Workers' Compensation has an OSHA On-Site Consultation service which includes free on-site safety inspections and consultation, safety program assistance, and safety and hygiene training or seminars. More information can be found at: <http://www.ohiobwc.com/employer/programs/safety/SandHOSHAOnSite.asp>.

If you have any questions, please contact me at (330) 963-1217, or robert.almquist@epa.ohio.gov.

Sincerely,



Robert Almquist
Division of Materials and Waste Management

RA:cl
Enclosure

ec: Frank Popotnik, DMWM, NEDO
Natalie Oryshkewych, DMWM, NEDO
Jeff Mayhugh, DMWM, CO
Marlene Kinney, DMWM, NEDO
Lynn Sowers, DMWM, NEDO
Mary Dalton, Summit County Public Health

Completed verification forms required to be submitted to CO should be e-mailed to brad.hauser@epa.state.oh.us.

Site EPA ID No. Site Name Site Location Information Site Land Type (check only one) NAICS code(s) www.census.gov/epcd/www/naics.html	EPA ID Number:	Name: Upper Deck Lounge		Website: (Optional)								
	Street Address: 357 W Turkeyfoot Lake Road											
	City, Town, or Village: Akron			State: OH								
	County Name: <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:12.5%; border: 1px solid black;">Private <input checked="" type="checkbox"/></td> <td style="width:12.5%; border: 1px solid black;">County <input type="checkbox"/></td> <td style="width:12.5%; border: 1px solid black;">District <input type="checkbox"/></td> <td style="width:12.5%; border: 1px solid black;">Federal <input type="checkbox"/></td> <td style="width:12.5%; border: 1px solid black;">Indian <input type="checkbox"/></td> <td style="width:12.5%; border: 1px solid black;">Municipal <input type="checkbox"/></td> <td style="width:12.5%; border: 1px solid black;">State <input type="checkbox"/></td> <td style="width:12.5%; border: 1px solid black;">Other <input type="checkbox"/></td> </tr> </table>					Private <input checked="" type="checkbox"/>	County <input type="checkbox"/>	District <input type="checkbox"/>	Federal <input type="checkbox"/>	Indian <input type="checkbox"/>	Municipal <input type="checkbox"/>	State <input type="checkbox"/>
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Facility Representative Additional names can be recorded in number 12 Only provide address information if it is different than the site address	First Name: John		MI:	Last Name: Thorton	
	Title:				
	Phone Number: 330-807-0807			Phone Number Extension:	
	E-Mail Address:				
	Fax Number:			Fax Number Extension:	
	Street or P.O. Box: 294 W Turkeyfoot Lake Road				
	City, Town or Village: Akron		State: OH		

Legal Owner And Operator of the Site. List Additional Owners and/or Operators in the Comment Section or on another copy of this form page	Name of Site's Legal Owner: John Thorton				Date Became Owner (mm/dd/yyyy):				
	Owner Type:	Private <input type="checkbox"/>	County <input type="checkbox"/>	District <input type="checkbox"/>	Federal <input type="checkbox"/>	Indian <input type="checkbox"/>	Municipal <input type="checkbox"/>	State <input type="checkbox"/>	Other <input type="checkbox"/>
	Street or P.O. Box: same as rep.								
	City, Town or Village:				Owner Phone #:				
	State:				Country:		Zip Code:		
	Name of Site's Operator:				Date Became Operator (mm/dd/yyyy):				
	Operator Type:	Private <input type="checkbox"/>	County <input type="checkbox"/>	District <input type="checkbox"/>	Federal <input type="checkbox"/>	Indian <input type="checkbox"/>	Municipal <input type="checkbox"/>	State <input type="checkbox"/>	Other <input type="checkbox"/>
	Street or P.O. Box:								

VIOLATIONS CITED?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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TYPE OF HANDLER - MARK "X" AS APPROPRIATE

<input type="checkbox"/> Not a HW Generator	<input checked="" type="checkbox"/> UNKNOWN: Cited for violation of 3745-52-11	<input type="checkbox"/> Large Quantity Generator (LQG)
	<input type="checkbox"/> Short-Term/Temporary Generator (generates from a short-term or one-time event and not from on-going processes). <i>Check the box for the applicable generator status and provide a comment.</i>	<input type="checkbox"/> Small Quantity Generator (SQG)
		<input type="checkbox"/> Conditionally Exempt Small Quantity Generator
		<input type="checkbox"/> U.S. Importer of Hazardous Waste
		<input type="checkbox"/> Mixed Waste (Hazardous and Radioactive) Generator

TYPE OF REGULATED WASTE ACTIVITY (MARK "X" IN ALL OF THE APPROPRIATE BOXES)

- | | |
|---|--|
| <input type="checkbox"/> Hazardous Waste Transporter | <input type="checkbox"/> Exempt Boiler and/or Industrial Furnace |
| <input type="checkbox"/> Hazardous Waste Transfer Facility | <input type="checkbox"/> Small Quantity On-Site Burner Exemption |
| <input type="checkbox"/> Treater, Storer or Disposer of Hazardous Waste | <input type="checkbox"/> Smelting, Melting, Refining Furnace Exemption |
| <input type="checkbox"/> Recycler of Hazardous Waste | <input type="checkbox"/> Underground Injection Control Facility |
| <input type="checkbox"/> 72-Hour Recycler | <input type="checkbox"/> Receives Hazardous Waste from Off-site |

UNIVERSAL WASTE ACTIVITIES (INDICATE TYPES OF UNIVERSAL WASTE MANAGED (CHECK ALL BOXES THAT APPLY))

- | | |
|---|---|
| <input checked="" type="checkbox"/> Small Quantity Handler of Universal Waste | <input type="checkbox"/> Destination Facility for Universal Waste |
| <input type="checkbox"/> Large Quantity Handler of Universal Waste
(accumulates 5,000 kg. or more) | |

CHECK ALL BOXES BELOW THAT APPLY FOR THE TYPES OF UNIVERSAL WASTE THE FACILITY MANAGES

- Batteries
 Pesticides
 Mercury containing equipment
 Lamps

USED OIL ACTIVITIES (INDICATE TYPE(S) OF ACTIVITY(S))

- Used Oil Generator
 Used Oil Transporter
 Used Oil Transfer Facility
 Used Oil Processor
 Used Oil Re-refiner
 Off-Specification Used Oil Burner
 Used Oil Fuel Marketer who directs shipment of Off-Spec Used Oil
 Used Oil Fuel Marketer who first claims the Used Oil meets the specifications

Eligible Academic Entities with Laboratories: Facility has previously notified that they are opting into managing laboratory hazardous waste pursuant to OAC rules 3745-52-200 through 3745-52-216. Check the box(es) below to indicate the laboratory type.

- College or University
 Teaching hospital that is owned by or has a formal written affiliation agreement with a college or university
 Non-profit Institute that is owned by or has a formal written affiliation agreement with a college or university

Waste Codes for Federally Regulated Hazardous Wastes. Please list the codes for the federally regulated hazardous waste handled at the site. List them in the order they are presented in the regulations (e.g., D001, D003, F007, U112). Use an additional page or list them in the comments if more space is needed. If the waste codes are the same as listed in the most recent RCRAInfo source record, you do not need to list them. Instead just indicate the date of the most recent source record.

COMMENTS: USE THIS AREA TO DESCRIBE WHETHER THE INSPECTION WAS ANNOUNCED, WHETHER THE WASTE IS STORED IN TANKS OR CONTAINERS, ETC.

Announced	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Additional Facility Representatives:	Mary and the owner of the bar
Tanks	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
Containers	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		

Name of Inspector(s)

Robert Almquist

Name of Inspector(s)

Date of Inspection/Time
(mm/dd/yyyy) (hh:mm)

7-18-2012

Comments:

**CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR REQUIREMENTS
COMPLETE AND ATTACH A PROCESS, WASTE, P2 SUMMARY SHEET**

CESQG: ≤100Kg. (Approximately 25-30 gallons) of waste in a calendar month or < 1 Kg. of acutely hazardous waste.
 SQG: Between 100 and 1,000 Kg. (About 25 to under 300 gallons) of waste in a calendar month.
 LQG: ≥ 1,000 Kg. (~300 gallons) of waste in a calendar month or ≥1 Kg. of acutely hazardous waste in a calendar month.
NOTE: To convert from gallons to pounds: Amount in gallons x Specific Gravity x 8.345 = Amounts in pounds.

Safety Equipment Used: Safety glasses and safety boots

WASTE EVALUATION

1.	Have all wastes generated at the facility been adequately evaluated? [3745-52-11]	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
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GENERATOR CLASSIFICATION

2.	Does the generator produce <100 kg. of hazardous waste per month? [conditionally exempt small quantity generator ("CESQG")]	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
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NOTE: If quantities of hazardous waste accumulated on-site at any one time exceed 1,000 Kg. - or the generator produces between 100 and 1,000 Kg. of hazardous waste per month, it is operating as a Small Quantity Generator ("SQG"). If so, complete the Small Quantity Generator Requirements checklist.

OFF-SITE SHIPMENT OF HAZARDOUS WASTE

3.	Does the CESQG ensure delivery of hazardous waste(s) to an off-site permitted TSD? [3734.02(F)]	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
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TREATMENT OF HAZARDOUS WASTE

4.	Does the generator treat hazardous waste in a:	
	a. Container that meets 3745-66-70 to 3745-66-77?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
	b. Tank that meets 3745-66-90 to 3745-66-101 except 3745-66-97(C)?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
	c. Drip pads that meet 3745-69-40 to 3745-69-45?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
	d. Containment building that meets 3745-256-100 to 3745-256-102?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>

NOTE: Complete appropriate checklist for each unit.

NOTE: If the CESQG conducts treatment they are subject to the LQG requirements.

NOTE: If waste is treated to meet LDRs, use LDR checklist.

MIX HAZARDOUS WASTE WITH USED OIL

5.	Does the CESQG mix its hazardous waste with used oil for the purpose of burning for energy recovery? [3745-51-05(J)] If so:	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
	a. Does the CESQG manage the mixture in accordance with 3745-279-21?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>