



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](http://www.epa.ohio.gov/dhwm/laws_regs.aspx)

John Thorton  
Turkeyfoot Properties Company  
July 30, 2012  
Page 2

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.

John Thorton  
Turkeyfoot Properties Company  
July 30, 2012  
Page 3

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](mailto: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

Send to Central Office <input checked="" type="checkbox"/>	<b>Ohio Environmental Protection Agency</b> <b>RCRA SUBTITLE C SITE</b> <b>IDENTIFICATION/VERIFICATION FORM</b>		For Ohio EPA use only
Completed verification forms required to be submitted to CO should be e-mailed to <a href="mailto:brad.hauser@epa.state.oh.us">brad.hauser@epa.state.oh.us</a> .			
<b>Site EPA ID No.</b> <b>Site Name</b>  <b>Site Location Information</b>  <b>Site Land Type</b> (check only one) <b>NAICS code(s)</b> <a href="http://www.census.gov/epcd/www/naics.html">www.census.gov/epcd/www/naics.html</a>	EPA ID Number: Name: <b>Upper Deck Lounge</b> Website: (Optional) Street Address: <b>357 W Turkeyfoot Lake Road</b> City, Town, or Village: <b>Akron</b> State: <b>OH</b> County Name: 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"/> Other <input type="checkbox"/> Zip Code:		
<b>Facility Representative</b>  Additional names can be recorded in number 12  Only provide address information if it is different than the site address	First Name: <b>John</b> MI: Last Name: <b>Thorton</b> Title: Phone Number: <b>330-807-0807</b> Phone Number Extension: E-Mail Address: Fax Number: Fax Number Extension: Street or P.O. Box: <b>294 W Turkeyfoot Lake Road</b> City, Town or Village: <b>Akron</b> State: <b>OH</b> Zip Code: <b>44319</b>		
<b>Legal Owner And Operator of the Site.</b> List Additional Owners and/or Operators in the Comment Section or on another copy of this form page	Name of Site's Legal Owner: <b>John Thorton</b> 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: <b>same as rep.</b> 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: Operator Phone #: City, Town or Village: Country Zip Code: State:		
<b>VIOLATIONS CITED?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
<b>TYPE OF HANDLER - MARK "X" AS APPROPRIATE</b>			
<input type="checkbox"/> Not a HW Generator	<input checked="" type="checkbox"/> UNKNOWN: Cited for violation of 3745-52-11 <input type="checkbox"/> Short-Term/Temporary Generator (generates from a short-term or one-time event and not from on-going processes). Check the box for the applicable generator status and provide a comment.		<input type="checkbox"/> Large Quantity Generator (LQG) <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



