



State of Ohio Environmental Protection Agency

Northwest District Office

347 North Dunbridge Road
Bowling Green, OH 43402-9398

TELE: (419) 352-8461 FAX: (419) 352-9468
www.epa.state.oh.us

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Re: Definace County
Open Burning Complaint

Notice of Violation

September 30, 2009

CERTIFIED MAIL

Ed & Caludia Sowers, Property Owners
Express Auto
04728 State Route 2
Hicksville, Ohio 43526

Dear Mr. & Ms. Sowers:

This office received a complaint on September 10, 2009, concerning open burning being conducted on your property. I investigated the complaint on September 24, 2009. My investigation shows that household trash items, including plastics, and an undetermined number of oil filters were burned on the property for disposal purposes. Information provided by other members of this agency were able to document evidence of past burning of tires and construction and demolitions debris on the premises as well.

Based on these findings, there is sufficient evidence to determine that illegal open burning did occur and the complaint is justified. This is a violation of OAC rule 3745-19-04(A). A copy of the OAC rules pertaining to open burning has been enclosed for your review.

Please submit a written response to Ohio EPA, Northwest District Office indicating your understanding of the regulations and your commitment that no future illegal open burning will occur. Your response should be received by this agency no later than October 16, 2009.

Please be advised that the submission of information to respond to this letter does not constitute waiver of the Ohio EPA's authority to seek civil penalties pursuant to Ohio Revised Code Section 3704.06. The Ohio EPA will make a decision whether to pursue such penalties regarding this matter at a later date.

Mr. & Mrs. Sowers
September 30, 2009
Page Two

If you have any questions concerning this letter or the regulations, please call me at (419) 373-3137 or e-mail at thomas.cikotte@epa.state.oh.us.

Sincerely,



Thomas C. Cikotte
Division of Air Pollution Control

/lb

Enclosure

pc: Lisa Holscher, U.S. EPA Region V
Tom Kalman, DAPC - CO
Thomas C. Cikotte, DAPC - NWDO
Defiance County Health Dept.
7009 0820 0000 0591 9310

ec: Don Waltermeyer, DAPC - NWDO
Tom Sattler, DAPC - NWDO
Brent Goetz, DSIWM - NWDO
Don North - DHWM - NWDO

Re: Definace County
Open Burning Complaint

Notice of Violation

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Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korfeski, Director

Re: Defiance County
Friends Express Automotive
Notice of Violation
DSIWM Case No. 09-39

October 7, 2009

CERTIFIED MAIL
7009 0820 0000 0591 9839

Mr. Ed & Caludia Sowers
4728 State Route 2
Hicksville, Ohio 43526

Dear Mr. & Ms. Sowers

On September 4, 2009, I, representing the Ohio Environmental Protection Agency (Ohio EPA) completed an inspection of the former Friends Express Auto (Facility), owned and operated by you. Both of you represented the Facility during the inspection. The purpose of the inspection was to investigate a complaint alleging that the Facility disposed of scrap tires and other solid waste through open burning in an excavated hole. The complaint further alleged that this had been a practice of the Facility for multiple years and throughout the time period old holes would be filled, burying the remnants of burnt materials and chemicals, and a new hole would be excavated.

Currently the Facility is not in operation. You indicated that you had operated the Facility for years, but within the last year had rented the building out to a tenant, who also operated an automotive Facility. Due to a dispute, the tenant no longer operates at the location and you have not re-established your Facility. You stated that you still do a minimal amount of work for friends and family.

During the inspection, I observed approximately 250-300 scrap tires located to the west of the service center building (Photos 1 and 2). I also observed an excavated hole containing the remnants of burnt materials, including steel bands from tires (Photo 3). Additionally, materials that had not yet been burnt, including 5 scrap tires, fluorescent light bulbs, rubber tubing, a wooden door, and other miscellaneous materials were present within the hole (Photo 4). You stated that the tires and the burning activities were from the previous tenant; however, with your residence located on the same property as the Facility it would be unlikely for you to have not been aware of the burning activities taking place. The complainant also alleged that this had been taking place for years; however, you only began leasing the Facility out within the past year. Additionally, as the property owner you are responsible for tires left on your property by the previous tenant and any illegal burning and illegal disposal activities that have taken place. You could not produce any records indicating proper disposal of scrap tires generated from your years of previous operation, and indicated that an unlicensed tire transporter, transported tires from the Facility for disposal. You refused to provide the name of the illegal scrap tire transporter.

Notice of Violations of Ohio laws and Rules

Ohio Revised Code (ORC) 3734.83(C) states "Except as provided in division (D) of this section, no person who possesses scrap tires shall cause them to be transported by any person who is not registered as a transporter under this section."

By allowing a non-registered tire transporter to transport tires generated at the Facility you are in violation of ORC 3734.83(C).

Additionally, shipping papers meeting the requirements outlined in OAC Rule 3745-27-56 were not utilized, therefore, you are also in violation of OAC Rule 3745-27-56.

Any additional tires that are transported must be either transported in loads of no greater than ten tires or must be transported by a registered tire transporter. Additionally, shipping papers meeting the requirements in OAC Rule 3745-27-56 must be used for all shipments of greater than ten scrap tires.

Ohio Revised Code (ORC) Section 3734.03 states, "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."

By disposing of solid waste by open burning and/or burying you are in violation of ORC 3734.03.

You must cease disposing of solid waste by burning and/or burying immediately, failure to do so may result in increased enforcement action. Additionally, details provided in the complaint, indicated that a large area on the property had been used for burning/burying activities and a large amount of solid waste may be buried in these areas. Ohio EPA reserves the right to require all materials to be excavated and properly disposed, in the event that additional evidence supporting this allegation is obtained.

OAC Rule 3745-27-61(A)(2)(a) states "A premises where tires are sold at retail where no more than one thousand scrap tires are present any time in an unsecured, uncovered, outdoor location, or where any number of scrap tires are secured in a building or a covered, enclosed container, trailer, or installation" is exempt from registration requirements.

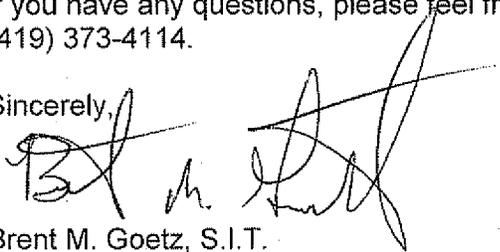
Friends Express Automotive is no longer an operating business and no longer meets this exemption. Therefore, you are only permitted to have 100 or fewer scrap tires, and all tires remaining on the property must be stored in a dry, covered location or treated monthly with a larvicide.

Mr. and Mrs. Sowers
October 7, 2009
Page 3

As previously mentioned approximately 250-300 scrap tires were present at the Facility at the time of the inspection. **All tires in excess of the 100 that you are permitted to have must be removed and properly disposed and receipts indicating proper disposal must be provided to my attention at 347 N. Dunbridge Road, Bowling Green, Ohio 43402 within 45 days of receipt of this letter.** Please be aware that only a registered scrap tire transporter is permitted to transport greater than ten tires in a load. For your convenience I have attached a list of Ohio EPA registered scrap tire transporters and Ohio EPA licensed scrap tire facilities.

If you have any questions, please feel free to contact me at Ohio EPA, Northwest District Office (419) 373-4114.

Sincerely,



Brent M. Goetz, S.I.T.
Environmental Specialist
Division of Solid and Infectious Waste Management

/csl

Enclosures

pc: File:Defiance County, Tires

ec: Mike Reiser, NWDO, DSIWM
Tom Cikotte, NWDO, DAPC
Don North, NWDO, DHWM

**OHIO ENVIRONMENTAL PROTECTION AGENCY
COMPLAINT INVESTIGATION REPORT**

DISTRICT	COUNTY	DATE RECEIVED	DATE(S) INVESTIGATED
NWDO	Defiance	9.29.09	Phone – 10.2.09
TYPE	AIR		COMPLAINANT: Deron Eicher – 419.487.1757
TELEPHONE <u>X</u>	INDUSTRIAL ___	HPF	SUSPECTED SOURCE OF EMISSIONS: Ed Sowers Express Auto 04728 State Route 2 Hicksville, OH 43526 (phone disconnected)
VISIT ___	PARTICULATE ___		
LETTER ___	ODOR ___		
DCN ___	FUGITIVE DUST ___		
E-MAIL ___	OPEN BURNING <u>X</u>		
OTHER ___	OTHER		

STATEMENT OF COMPLAINANT: Says a neighbor of Ed Sowers called him to tell him that there was a huge fire producing thick, black smoke around 10:30 PM on 9.25.09. He advise the neighbor to call the Sherriff. Neighbor declined because they didn't want to get involved with the issues between Sowers & Eicher. Eicher called Defiance Co. Sheriff Office (DCSO) and asked for a deputy to be dispatched.

STATEMENT OF SOURCE OPERATOR:

FINDINGS: JUSTIFIED ___ **NOT JUSTIFIED** X **CANNOT BE DETERMINED**

RECOMMENDATIONS:

DATE OF WRITTEN FOLLOW UP

CORRECTIVE ACTION AGREED TO BY SOURCE:

COMMENTS: I had been out to the facility the day before the fire and told the Sowers' what they could and could not burn. If tires were involved this was a knowing, recalcitrant violation.

Deputy Steve Florry was dispatched and his report is attached. Sowers stated that the radials in the fire were from previous burns. Deputy Florry stated neither here nor there. A call was placed to Deputy Florry asking for more information about his observations.

Deputy Florry stated that he did observe tire radials in the fire, however, he does not believe that it was a result of the fire he observed, but that they were left from a previous burn.

INVESTIGATOR(S): _____ TCC

DATE RESOLVED: 10.2.09

**OHIO ENVIRONMENTAL PROTECTION AGENCY
COMPLAINT INVESTIGATION REPORT**

DISTRICT	COUNTY	DATE RECEIVED	DATE(S) INVESTIGATED
NWDO	Defiance	9.10.09	9.24.09
<u>TYPE</u>	<u>AIR</u>		COMPLAINANT: Don North – NWDO DHWM
TELEPHONE <input type="checkbox"/>	INDUSTRIAL <input type="checkbox"/>	HPF	SUSPECTED SOURCE OF EMISSIONS: Ed Sowers Express Auto 04728 State Route 2 Hicksville, OH 43526 (phone disconnected)
VISIT <input type="checkbox"/>	PARTICULATE <input type="checkbox"/>		
LETTER <input checked="" type="checkbox"/>	ODOR <input type="checkbox"/>		
DCN <input type="checkbox"/>	FUGITIVE DUST <input type="checkbox"/>		
E-MAIL <input type="checkbox"/>	OPEN BURNING <input checked="" type="checkbox"/>		
OTHER <input type="checkbox"/>	OTHER		
STATEMENT OF COMPLAINANT: See DHWM NOV from Don North. Paraphrased: Facility burning used oil filters prior to recycling and burning trash.			
STATEMENT OF SOURCE OPERATOR: Leased garage out to Darren Eicher. Says Eicher is the one who burned all the stuff and left all the tires. Mr. Sowers was not aware that he couldn't burn his trash and says he didn't burn the oil filters. Mr. Sowers' friend told me that he didn't think the EPA does anything for anyone and he has no respect for them. Sowers agreed with that sentiment and then asked what I would say if he said that he rejects the Ohio Administrative Code and doesn't think that EPA has any authority because he lives out in the country and he's on his own property.			
FINDINGS: JUSTIFIED <input checked="" type="checkbox"/> NOT JUSTIFIED <input type="checkbox"/> CANNOT BE DETERMINED <input type="checkbox"/>			
RECOMMENDATIONS: NOV		DATE OF WRITTEN FOLLOW UP <u>9.29.09</u>	
CORRECTIVE ACTION AGREED TO BY SOURCE: None. Mr. Sowers doesn't think he is breaking the law.			
COMMENTS: Mr. Sowers was very abrasive and upset that I was there. He was mad because I was investigating his facility, because I was the third representative from Ohio EPA to do an inspection. Both Don North, from DHWM, and Brent Goetz, from DSIWM, had been there before. I was able to identify one burn site consisting of two burn barrels. One barrel had household trash including plastics, food waste, steel cans and aluminum cans in it. The other barrel was full of what appeared to be newspapers and charred oil filters. Pictures from Brent Goetz identify at least one more burn site with appeared to contain burned tire radials, rubber tubing, unidentifiable plastics, a wooden door and brush.			

INVESTIGATOR(S): TCC

DATE RESOLVED: 9.29.09

T I R E S

EXPRESS AUTO
542-6246



Lube Oil Change

09/24/2009 11:16





09/24/2009 11:17



09/01/2009 02:40:10



09/04/2009 02:45 pm



09/04/2009 02:36 pm







09/04/2009:02:39 pm