



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

Re: Midwest Guardian  
OHD 048782049  
Auglaize County  
Hazardous Waste  
Partial Return to Compliance

November 2, 2012

CERTIFIED MAIL

Mr. Donald Miller, Jr., Vice-President  
Midwest Guardian, Inc.  
727 Keller Drive  
P. O. Box 2041  
Wapakoneta, Ohio 45895

Dear Mr. Miller:

Thank you for your October 12, 2012, response to Ohio EPA's September 18, 2012, Notice of Violation (NOV) letter. This letter represents Ohio EPA's response concerning each of the violations cited in the September 18, 2012, NOV and indicates that additional violations have been abated.

During the **May 9, 2012**, inspection the following violations were found:

**1. Transportation of Hazardous Waste to an Unauthorized Facility  
ORC Section 3734.02(F)**

According to a telephone conversation with you on November 1, 2011, discussions during Ohio EPA's inspection on May 9, 2012, and another telephone conversation with you, Mitch Mathews, and myself on May 10, 2012, MGI (through Guardian Express, Inc.) unlawfully transported numerous 55-gallon drums of corrosive and toxic hazardous waste acid (D002 & D008) from customers to its facility at 727 Keller Drive in Wapakoneta, Ohio, for as many as 18 years. MGI is not permitted to accept hazardous waste. Therefore, MGI has transported hazardous waste to a facility not authorized to accept hazardous waste.

**In your October 12, 2012, response you state that "Midwest Guardian, Inc. did however hire a licensed hazardous material/hazardous waste hauler (Guardian Express, Inc.) to pick up waste acid from our customers..." Therefore, MGI "caused to be transported" hazardous waste to a facility not authorized to accept hazardous waste.**

Furthermore, Ohio EPA's February 25, 1994, letter was in response to MGI's questions about acid recycling and the Agency's response regarded acid recycling – not hazardous waste acid management and disposal. The largest tank referred to in this letter was the largest recycling tank not the largest hazardous waste tank. Since MGI was adding waste acid from its customers to a hazardous waste tank, this was not considered a step in the acid reclamation process, and therefore, not exempt from the requirement to obtain a hazardous waste installation and operation permit.

**This violation is indeed founded and will not be withdrawn.**

**2. Unpermitted Hazardous Waste Treatment, Storage & Disposal  
ORC Section 3734.02(E)&(F)**

At the MGI facility, the hazardous waste that was unlawfully transported to the MGI facility as outlined in violation number one above, was pumped into the hazardous waste acid above ground tank. MGI does not possess a permit for the storage of hazardous waste. Therefore, MGI has become an unpermitted hazardous waste storage facility by storing the hazardous waste acid (D002 & D008) from numerous customers in the hazardous waste above ground tank at its facility.

MGI must submit to Ohio EPA a complete list of its customers for the past five years, including the name and address of the customer, their phone number, a contact person and the dates and amounts of hazardous waste acid MGI had transported from their facilities to MGI's facility.

**As outlined under violation number 1, this violation remains outstanding. MGI must provide the required information immediately.**

**3. Removal of Accumulated Liquids  
OAC Rule 3745-66-93(C)(4)**

On May 9, 2012, I observed liquid in the collection sump of the hazardous waste acid tank's secondary containment system. To abate this violation, MGI must immediately remove this liquid from the sump and either sample and analyze the liquid for hazardous waste characteristics or pump the liquid into the hazardous waste acid tank for proper disposal as a hazardous waste. MGI must submit a photograph demonstrating that the sump is empty and explain what it did with the liquid.

In your October 12, 2012, response you state that it is your "standard operating procedure to remove any liquid from the collection sump when it is full". However, this rule states that "spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within twenty-four hours". You stated that MGI is making a good faith effort to comply with this rule and you enclosed a photo of the collection sump that, according to you, demonstrates that the sump is empty. (It is not clear, due to the quality of the photo, that the sump is empty.) Based on all this information, MGI has demonstrated abatement of this violation.

4. **OAC Rule 3745-66-73(A)  
Management of Containers**

On May 9, 2012, MGI did not keep the metal bin for battery cases and the cardboard gaylord for battery plates (both located in the recycling room) closed while employees were on break. Therefore, in order to abate this violation, MGI must place a cover over each container of hazardous waste during break and lunch times, in addition to the end of the work day and once the container is full. Please provide photographic documentation that this has been accomplished.

Enclosed with your October 12, 2012, response letter are two photos demonstrating that the two hazardous waste containers have been closed. Therefore, this violation has been abated.

5. **OAC Rule 3745-66-95  
Tank System Inspection Requirements**

On May 9, 2012, Ohio EPA determined that although MGI was conducting a daily inspection of a portion of the tank system, including an inspection by camera on the weekends and holidays, it was not observing the entire tank, containment area, sump area and area surrounding the tank containment. Therefore, in order to abate this violation, MGI must develop a method of inspecting all these components, describe the new inspection method and submit copies of the inspection reports for the most recent four week period.

Each day there is hazardous waste in a tank system the tank system must be inspected, at least once. This has nothing to do with feed systems. It is still not clear that MGI understands its inspection requirements. If there is hazardous waste in a tank system it can leak or be released, and must be inspected on a daily basis.

The violation originally cited in the November 24, 2006, NOV was due to MGI's failure to conduct a daily inspection. This violation is due to MGI's failure to inspect 1. The above ground portions of the tank; and 2. The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). Ohio EPA can only act upon information provided to it. Ohio EPA was not aware that MGI could not view all these areas with its camera. It is MGI's responsibility to fully comply with the inspection requirements. MGI must demonstrate how it will inspect 1. The above ground portions of the tank; and 2. The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation) each day that there is waste in the tank. This violation remains outstanding. MGI must continuously comply with this rule.

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During the July 18, 2012, inspection of Sauder Woodworking Company in Archbold, Ohio, the following additional violations were observed:

**1. Transportation of Hazardous Waste to an Unauthorized Facility  
ORC Section 3734.02(F)**

According to representatives of Sauder Woodworking Company (SWC) and documents which SWC submitted to Ohio EPA, MGI (through Guardian Express, Inc.) unlawfully transported loads of fork lift batteries containing corrosive and toxic hazardous waste acid (D002 & D008) from SWC to its facility at 727 Keller Drive in Wapakoneta, Ohio, on at least June 13, 2011, January 6, 2012, January 17, 2012, May 2, 2012, and July 19, 2012. MGI is not permitted to accept hazardous waste. Therefore, MGI has transported hazardous waste to a facility not authorized to accept hazardous waste.

In your October 12, 2012, response you state that "Midwest Guardian, Inc. did however hire a licensed hazardous material/hazardous waste hauler (Guardian Express, Inc.) to pick up their spent industrial batteries..." Therefore, MGI "caused to be transported" hazardous waste to a facility not authorized to accept hazardous waste.

**Representatives of SWC stated that they were instructed by MGI to fill the batteries with the hazardous waste acid. MGI has indeed accepted hazardous waste from this customer.**

**2. Unpermitted Hazardous Waste Treatment, Storage & Disposal  
ORC Section 3734.02(E)&(F)**

At the MGI facility, the hazardous waste that was unlawfully transported to the MGI facility as outlined in violation number one above, was placed into the hazardous waste acid above ground tank. MGI does not possess a permit for the storage of hazardous waste. Therefore, MGI has become an unpermitted hazardous waste storage facility by storing the hazardous waste acid (D002 & D008) from SWC in the hazardous waste above ground tank at its facility.

MGI must submit to Ohio EPA a complete list of its customers for the past five years, including the name and address of the customer, their phone number, a contact person and the dates and amounts of hazardous waste acid MGI had transported from their facilities to MGI's facility.

**Since MGI was adding waste acid from its customers to a hazardous waste tank, this was not considered a step in the acid reclamation process, and therefore, not exempt from the requirement to obtain a hazardous waste installation and operation permit. This violation remains outstanding. MGI must provide the required information immediately.**

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During the **September 19, 2006**, inspection of MGI, the following additional violations were observed:

**1. Unpermitted Hazardous Waste Treatment, Storage or Disposal  
ORC Section 3734.02(E)&(F)**

MGI receives and stores hazardous waste batteries from various customers without possessing a permit for the storage of hazardous waste. You reported that MGI processes about 58,000 pounds of industrial batteries each day, about one and one half truckloads, since a truck can haul about 40,000 pounds of batteries. The batteries are stored in various areas outside the battery disassembly room.

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Ohio EPA's letter of June 7, 2006, required MGI to submit a permit application for storage of batteries prior to recycling by December 15, 2006.

**Ohio EPA is still in the process of evaluating your accumulation of batteries prior to recycling and violation number 1 from the November 24, 2006, NOV remains outstanding.**

2. **OAC Rule 3745-52-11  
Waste Evaluation**

This violation was abated on July 24, 2007.

3. **OAC Rule 3745-270-09(A)  
Special Rules Regarding Wastes that Exhibit a Characteristic**

If the generator determines that his waste displays a hazardous characteristic, the generator must determine underlying hazardous constituents (as defined in rule 3745-270-02 of the Administrative Code) in the characteristic waste.

MGI has failed to determine the underlying hazardous constituents for its wastes. In order to correct this violation: 1. MGI may have each characteristic hazardous waste sampled and analyzed for inorganic underlying hazardous constituents and record each on the accompanying land disposal restriction form; or 2. MGI may contact the disposal facility(s) and have them provide documentation that they are capable of treating MGI's characteristic hazardous waste to below the regulatory level for all the inorganic underlying hazardous constituents.

During the July 24, 2007, inspection I pointed out to you the list of underlying hazardous constituents found in OAC Rule 3745-270-48. During the May 9, 2012, inspection, we discussed this requirement again. MGI has still not determined the underlying hazardous constituents for its hazardous wastes.

**Your October 12, 2012, response provides no additional information. Therefore, this violation remains outstanding. MGI must determine the underlying hazardous constituents for the waste plastic that is sent to Envirosafe Services of Ohio in Oregon, Ohio. I have enclosed a copy of the underlying hazardous constituents in order to assist you.**

4. **OAC Rule 3745-66-73(A)  
Management of Containers**

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A container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste. MGI has failed to keep all containers of hazardous waste closed. Specifically, on September 19, 2006, a battery with two open cells was stored on the outside loading dock (see photos 1 and 2 enclosed).

Therefore, MGI must place all open battery cells within the disassembly room and provide photographic documentation that no open batteries are stored on the outside loading dock.

In a letter from Joseph Gregg, representing MGI, dated June 7, 2007, it is stated that staff have been instructed to keep all open batteries within the various process areas inside of the facility. As stated above, MGI must place all open battery cells within the Battery Recycling Area (disassembly room) which is identified as Area 5 in Midwest Guardian, Inc.'s Facility Management Plan, Appendix A to the June 26, 2000, Consent Order and Final Judgment Entry entered in Auglaize County Common Pleas Court Case 2000-CV-0110. In order to correct this violation, please confirm that open batteries will be placed within the Battery Recycling Area, which is Area 5.

**In your October 12, 2012, response you asked Ohio EPA to define the term "open battery". Any battery that is broken, breached or has caps removed is an open battery. Your October 12, 2012, response provides no additional information. Therefore, this violation remains outstanding.**

**5. OAC Rules 3745-66-71 & 3745-66-73(B)  
Condition and Management of Containers**

This violation was abated on July 24, 2007.

**6. OAC Rule 3745-66-95  
Tank System Inspection Requirements**

This violation was abated on July 24, 2007.

**7. OAC Rule 3745-65-31  
Maintenance and Operation of Facility**

**Attached to your October 12, 2012, response is a photo of the chipper seals. Therefore, this violation was abated on October 12, 2012.**

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MGI needs to immediately take the necessary measures to return to compliance with Ohio's environmental laws. Within 14 days of receipt of this letter, MGI is requested to provide documentation to this office including the steps taken to abate the violations cited above. 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 [don.north@epa.state.oh.us](mailto:don.north@epa.state.oh.us).

Please be advised that violations cited above will continue until the violations have 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 violations, MGI is requested to submit written correspondence of the steps that will be taken by date certain to attain compliance.

If you have any questions, please feel free to contact me at (419) 373-3074.

Sincerely,



Don North  
District Representative  
Division of Materials and Waste Management

/llr

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