



State of Ohio Environmental Protection Agency

Southwest District Office

401 E. Fifth St.
Dayton, Ohio 45402

TELE: (937) 285-6357 FAX: (937) 285-6249
www.epa.state.oh.us

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

December 22, 2008

CERTIFIED MAIL

Adrian Miller
8683 U.S. Rt 36
Covington, OH 45318

SUBJECT: NOTICE OF VIOLATION

Dear Mr. Miller:

On November 14, 2008, I investigated a complaint pertaining to the alleged improper disposal of construction and demolition debris (C&DD) and solid waste items, located on your property at 8683 U.S. Rt 36. Therese Tyson of the Miami County Health District accompanied me on this inspection.

During the investigation, we observed a pile of C&DD in the fill area.

In the fill area, we noticed primarily hard fill, however, we did observe C&DD, including, but not limited to, roofing shingles, wallboard and wood boards. I also observed solid waste, including, but not limited to, brush, plastic, paper and aluminum cans mixed into the fill. As we discussed last year before you submitted a Notice of Intent to Fill, clean hard fill may be accepted as long as it is managed in accordance with Ohio Administrative Code, guidance is provided at the end of this letter. C&DD and solid waste are prohibited at an unlicensed fill site.

Open Dumping is defined under Ohio Revised Code (ORC) Section 3734.01(I), which states in part:

"Open dumping" means the depositing of solid wastes into a body or stream of water or onto the surface of the ground at a site that is not licensed as a solid waste facility under section 3734.05 of the Revised Code...

Violations

The open dumping of solid waste is a violation of:

ORC Section 3734.03 which states in part:

No person shall dispose of solid wastes by open burning or open dumping, except as authorized by the director of environmental protection...

ORC 3734.05(A)(1), which states:

Except as provided in divisions (A)(4), (8), and (9) of this section, 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.

OAC Rule 3745-27-05(A), which states in part:

Disposal of solid waste under Chapter 3734 of the Revised Code shall only be by the following methods or combination thereof:

(1) Disposal at a sanitary landfill facility licensed in accordance with section 3734.05 of the Revised Code.

(2) Incinerating at an incinerator licensed in accordance with section 3734.05 of the Revised Code.

(3) Composting at a composting facility licensed or registered in accordance with section 3734.05 of the Revised Code...

OAC Rule 3745-27-05(C), which 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.

[Comment: Prompt removal and disposal of solid waste does not relieve any obligations under state or federal environmental statutes. This may include environmental clean-up of the site and/or remediation of ground water contamination resulting from the open dumping.]

Unauthorized disposal of C&DD is a violation of:

OAC 3745-37-01(C), which states:

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 except as otherwise specified in this rule.

OAC Rule 3745-400-04(B), which states in part:

No person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code.

ORC Section 3714.06(A), which states in 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...

ORC 3714.99, which states:

Whoever knowingly violates section 3714.13 of the Revised Code is guilty of a misdemeanor of the second degree. Each day of violation is a separate offense.

ORC 3734.99, which states:

Except as otherwise provided in divisions (B), (C), (D), (E), (F), (G), and (H) of this section, whoever recklessly violates any section of this chapter, except section 3734.025 [3734.02.5], 3734.18, 3734.57, 3734.572 [3734.57.2], 3734.573 [3734.57.3], 3734.574 [3734.57.4], or 3734.60 of the Revised Code, recklessly violates section 3734.03 of the Revised Code with regard to scrap tires, or recklessly violates an order issued under division (B)

of section 3734.13 of the Revised Code regarding a violation of the provisions of this chapter governing scrap tires, is guilty of a felony and shall be fined at least ten thousand dollars, but not more than twenty-five thousand dollars, or imprisoned for at least two years, but not more than four years, or both. Whoever violates section 3734.025 [3734.02.5], 3734.18, 3734.57, 3734.572 [3734.57.2], 3734.573 [3734.57.3], or 3734.574 [3734.57.4] of the Revised Code shall be fined not more than ten thousand dollars. Each day of violation constitutes a separate offense.

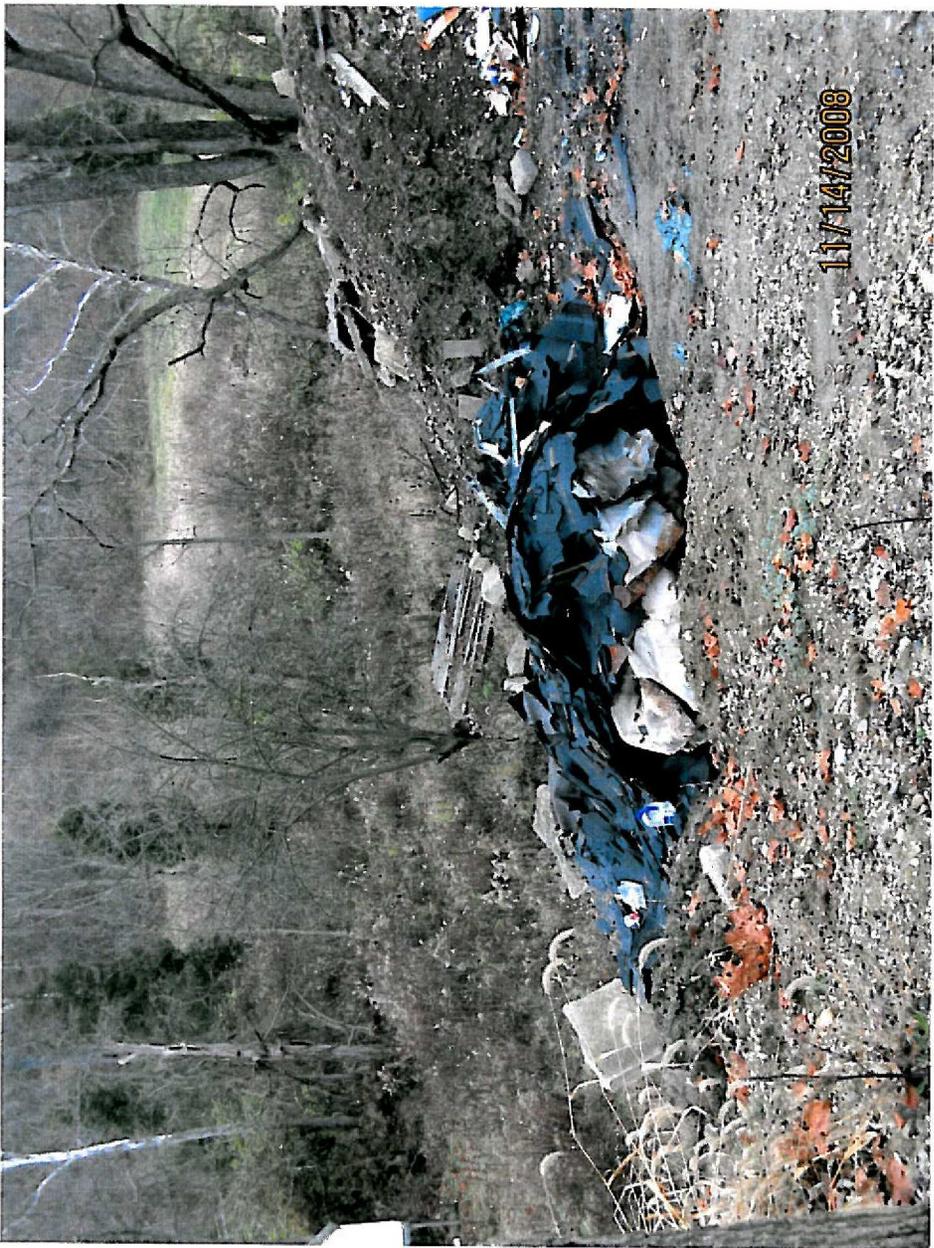
Corrective Actions

Immediately cease the acceptance and disposal of Solid Waste and C&DD. All Solid Waste and C&DD dumped at the site must be removed and properly disposed of at an appropriately licensed facility. Please respond in writing within fourteen (14) days of receipt of this correspondence regarding your remedy and implementation schedule in regards to the aforementioned violations. Please provide the Miami County Health District and Ohio EPA with a copy of all waste receipts from the disposal of the solid waste and C&DD. Please send the receipts to:

**Ohio EPA
401 East 5th Street
Dayton, OH 45402
Attn: Betty Arthungal**

Compliance with the requirements outlined in this letter shall not relieve you of your obligation to comply with other legal obligations, including but not limited to, Chapters 3704, 3714, 3734, or 6111 of the Ohio Revised Code or under the Federal Clean Water Act, Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act, or Resource Conservation and Recovery Act remedying conditions resulting from any release of contaminants to the environment.

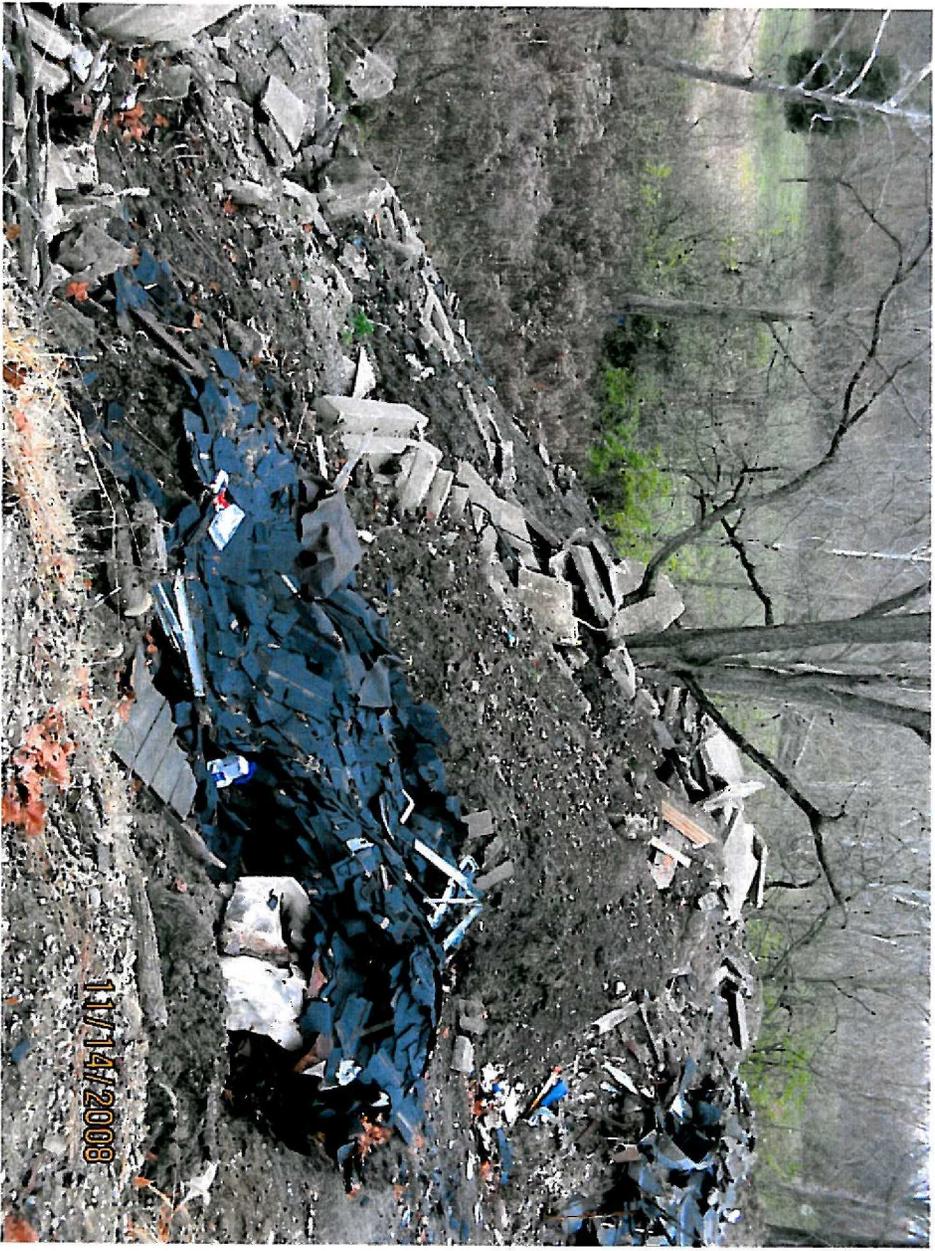
Photos of the fill area, taken during the investigation, are provided below:



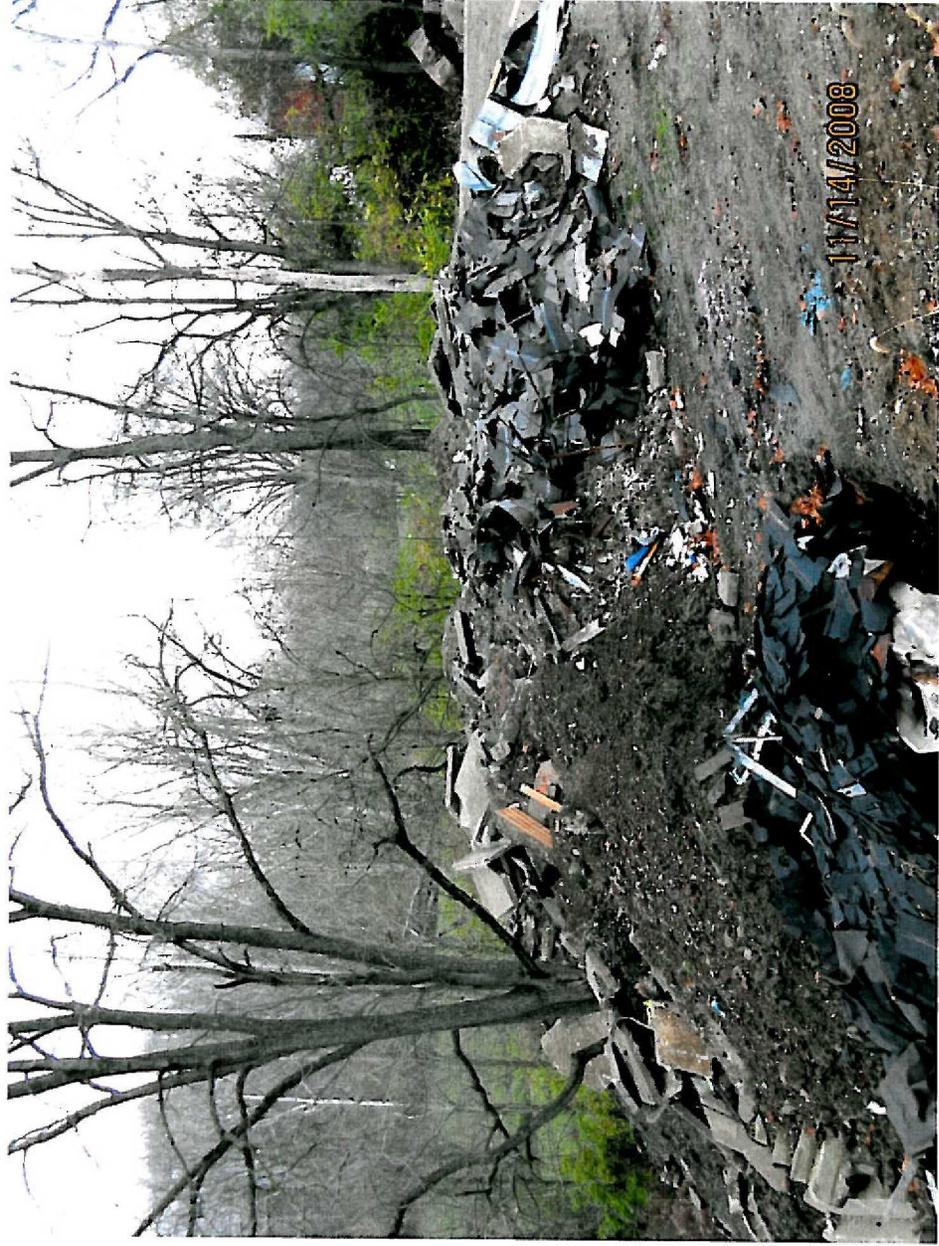
001: C&DD & misc. solid waste



002: C&DD & hard fill



003: brush, C&D & hard fill



004: C&DD, solid waste & hard fill



005: C&DD & solid waste



006: solid waste



007: C&DD

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Clean hard fill may be accepted as long as it is managed in accordance with Ohio Administrative Code (OAC) Rule 3745-400-05.

OAC Rule 3745-400-05(C) states in part:

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 if there are any changes in the information required by this rule for notification.

The notice of intent must include the following information:

1. The nature of the fill material
2. The site of generation or removal
3. The site(s) to be filled
4. When filling will begin and end
5. The telephone number of the notifier

Please provide a new "Notice of Intent to Fill" form to this office anytime a change is made to the information listed above.

If you have any questions, please contact me at (937) 285-6357.

Thank you for your time and consideration, regarding this matter.

Sincerely,



Betty Arthungal
Ohio EPA, Division of Solid and Infectious Waste Management

cc: Therese Tyson, Miami County Health District
File

BA/mab

DSIWM Doc. 0563
May 2002

Clean Hard Fill

What is Clean Hard Fill?

Clean hard fill consists only of reinforced or non-reinforced concrete, asphalt concrete, brick, block, tile, and/or stone.

Ohio Administrative Code 3745-400-05 addresses the regulation of clean hard fill.

What is meant by "Clean"?

"Clean" in clean hard fill means that the clean hard fill material is not contaminated by solid wastes, infectious wastes, hazardous wastes, or construction and demolition debris (C&DD). If these types of waste are commingled with clean hard fill, all of the materials must be handled and disposed of as solid waste, infectious waste, hazardous waste, or C&DD.

Uses for Clean Hard Fill

Clean hard fill can be:

- * Recycled into a useable construction material (see section titled **Can Clean Hard Fill be stored for future use?**),
- * Disposed of in licensed construction and demolition debris or other waste facilities,
- * Used to change grade on the site of generation or removal,
- * Used to change grade on a site other than the site of generation (see section titled **Notice of Intent to Fill**).

The provider and the user should also be aware that they are liable for any adverse environmental impacts that may occur due to the mismanagement of the clean hard fill. Before using the clean hard fill, the following should be considered:

- * Clean hard fill with material adhered or absorbed to it may be regulated under another program. For example, if PCBs are present it may be regulated under the Toxic Substances Control Act.

Clean hard fill that exhibits a hazardous waste characteristic or is contaminated with hazardous waste is defined as a hazardous waste. Such material is subject to regulation under the hazardous waste rules and cannot be used as fill material unless it is decontaminated according to the hazardous waste rules, OAC 3745-270.

- * Clean hard fill cannot be placed in regulatory wetlands or floodplains without first receiving permission to fill from the Ohio EPA Division of Surface Water and/or the U.S. Army Corps of Engineers.
- * Clean hard fill placement or storage must also be done in such a way that it does not cause a nuisance or health hazard. If done improperly, voids between these materials can be created and serve as a harbor or breeding ground for wild animals and rodents, or

result in an unstable area.

- * The presence of rebar may pose a safety risk. Cutting the rebar even with the concrete would reduce that risk.

Notice of Intent to Fill

Any person using clean hard fill to change grade on a site other than the site of generation, must provide a written "Notice of Intent to Fill" to the licensing authority(ies) 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 of generation or removal, the site(s) to be filled, when filling will begin and end, and the telephone number of the person making the notification.

The notification must be received at least seven days prior to filling by each local licensing authority with sites to be filled. The person making the notification will provide a new Notice of Intent to Fill if there are any changes in the information required by the rule for notification.

Failure to provide the Notice of Intent to Fill to the appropriate licensing authority prior to filling may result in the person engaged in filling being charged with a fourth degree misdemeanor.

Can Clean Hard Fill be stored for future use?

Clean hard fill can be stored for

the purpose of recycling into a useable construction material. It must be stored for a period of less than two years and be retrievable and substantially unchanged. A pile adjacent to a construction materials processing facility can exist for longer than two years if clean hard fill material is added to and removed from the pile within a two year period.

Clean hard fill can be temporarily stored for more than two years, or for another purpose, if it is held in such a manner that it remains retrievable and substantially unchanged, or if the site is licensed as a C&DD facility. Failure to meet either of these criteria is considered to be illegal disposal.

For more information, call your local health department, the Ohio EPA district office, or the Division of Solid and Infectious Waste Management.

Ohio EPA Division of Solid and Infectious Waste Management

Central District Office
(614) 728-3778
Northeast District Office
(330) 425-9171
Northwest District Office
(419) 352-8461
Southeast District Office
(740) 385-8501
Southwest District Office
(937) 285-6357

