



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

January 14, 2013

RE: **BENCIN TRUCKING
NOTICE OF VIOLATION**

CERTIFIED MAIL 7012 1010 0000 9467 7445

Mark Malbin
Bencin Trucking
6381 Chittenden Road, Suite E5
Hudson, Ohio 44236

Dear Mr. Malbin:

This letter contains the results of an inspection conducted by Ohio Environmental Protection Agency (Ohio EPA) at Bencin Trucking aka Bencin Material Hauling & Disposal Services, Inc. (Bencin) at 2636 Brecksville Road, Richfield on December 5, 2012. The purpose of the inspection was to respond to a complaint that you had placed waste in the warehouse and were not removing the waste. The inspection began at approximately 2:00 p.m.

Present for the inspection were:

Mark A. Malbin, President, Bencin Trucking
Dale Wainilko, Transportation Services International, Inc.
Scott Shane, Ohio EPA, Office of Special Investigations
Brian Frantz, Director of Planning and Zoning, Village of Richfield
Bob Jones, Lieutenant, Richfield Fire Department
Phil Mclean, Fire Chief, Richfield Fire Department
Mike Swanson, Detective Sergeant, Richfield Police Department
Dave Dysle, Ohio EPA, Division of Materials and Waste Management
John Wellman, Ohio Bureau of Criminal Identification and Investigation
Julie Brown, Summit County Public Health

The results below are listed in sections titled: Waste Transfer Area, West Warehouse, and Waste Disposal Area, and Mulch Area

Waste Transfer Area

On the parking lot just south of the Bencin buildings, there was some waste/debris at the waste/debris transfer area. This area is surrounded on three sides by concrete barriers. Ohio EPA considers this area an illegal solid waste transfer facility. The waste/debris pile included wood, plastic and metal debris, plastic containers, carpet, yard waste, pop bottles, cardboard, and unidentifiable debris. The pile was smaller than observed on November 23, 2011.

Operating an unlicensed, unpermitted solid waste transfer facility is a violation of Ohio's solid waste laws and rules, ORC 3734 and OAC 3745-27. The owner/operator is in violation of:

1. OAC 3745-27-05(C) Open dumping of solid wastes

This rule states in part, *"No person shall conduct, permit, or allow open dumping."*

The transfer area contained solid waste. Therefore, the owner/operator has violated OAC 3745-27-05(C) due to open dumping of solid wastes in the transfer area.

To achieve compliance, the owner/operator must:

- a. immediately stop all open dumping of solid wastes at Bencin's Richfield site and all other properties owned and operated by Bencin;
- b. immediately stop operating as an illegal solid waste transfer facility at Bencin's Richfield site and all other properties owned and operated by Bencin;
- c. at Bencin's Richfield site and all other properties owned and operated by Bencin, remove and properly dispose of all solid wastes at a licensed solid waste disposal facility and provide copies of the disposal receipts to Ohio EPA; and
- d. all unknown materials must be characterized to determine if they are hazardous wastes at Bencin's Richfield site and all other properties owned and operated by Bencin. All hazardous waste must be disposed of at a licensed hazardous waste facility.

2. ORC 3734.03 Open dumping of solid wastes

This law states in part, *"No person shall dispose of solid wastes by open burning or open dumping...No person shall dispose of treated or untreated infectious waste by open burning or open dumping."*

As stated in Item 1 above, there was solid waste in the transfer area. Therefore, the owner/operator has violated ORC 3734.03 due to open dumping of solid wastes.

To achieve compliance, the owner/operator must comply with the requirements stated in 1.a, 1.b, 1.c and 1.d above.

3. ORC 3734.05(A)(1) License for a solid waste facility

This law states in part, *"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.”

The owner/operator has violated ORC 3734.05(A)(1) due to failure to obtain a license prior to operating a solid waste facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 1.a, 1.b, 1.c and 1.d above.

4. OAC 3745-37-01(A) License for a solid waste facility

This rule states in part, “No person shall conduct municipal solid waste landfill, industrial solid waste landfill, residual solid waste landfill, compost facility, transfer facility, infectious waste treatment facility, or solid waste incineration facility operations without possessing a separate, valid license for each such operation, as required by Chapter 3734. of the Revised Code and the Administrative Code rules adopted thereunder. Each license shall be obtained from the board of health in the health district in which the facility is located, or by the director, if the director has assumed the licensing function for that health district.”

The owner/operator has violated OAC 3745-37-01(A) due to failure to obtain a license prior to operating a solid waste facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 1.a, 1.b, 1.c and 1.d above.

5. ORC 3734.05(A)(2) Permit for a solid waste facility

This law states in part, “Except as provided in divisions (A)(2)(b), (8), and (9) of this section, each person proposing to open a new solid waste facility or to modify an existing solid waste facility shall submit an application for a permit with accompanying detail plans and specifications to the environmental protection agency for required approval under the rules adopted by the director pursuant to division (A) of section 3734.02 of the Revised Code and applicable rules adopted under division (D) of section 3734.12 of the Revised Code at least two hundred seventy days before proposed operation of the facility and shall concurrently make application for the issuance of a license under division (A)(1) of this section with the board of health of the health district in which the proposed facility is to be located.”

The owner/operator has violated ORC 3734.05(A)(2) due to failure to obtain a permit prior to operating a solid waste facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 1.a, 1.b, 1.c and 1.d above.

6. ORC 3734.02(C) Permit for a solid waste facility

This law states in part, “. . . *Except as provided in this division and divisions (N)(2) and (3) of this section, no person shall establish a new solid waste facility or infectious waste treatment facility, or modify an existing solid waste facility or infectious waste treatment facility, without submitting an application for a permit with accompanying detail plans, specifications, and information regarding the facility and method of operation and receiving a permit issued by the director..*”

The owner/operator has violated ORC 3734.02(C) due to failure to obtain a permit prior to operating a solid waste facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 1.a, 1.b, 1.c and 1.d above.

7. In addition, the establishment of a solid waste transfer station requires permits for leachate containment and potential site storm water management. Ohio EPA, Division of Surface Water (DSW) investigated the owner/operator to determine if the owner/operator maintained compliance with the following laws:

- **ORC 6111.44:** This law states: *“no municipal corporation, county, public institution, corporation, or officer or employee thereof or other person shall provide or install sewerage or treatment works for sewage, sludge, or sludge materials disposal or treatment or make a change in any sewerage or treatment works until the plans therefore have been submitted to and approved by the director of environmental protection.”*
- **ORC 6111.04:** states in part, *“No person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state, and any such action is hereby declared to be a public nuisance, except in such cases where the director of environmental protection has issued a valid and unexpired permit, or renewal thereof, as provided in sections 6111.01 to 6111.08 of the Revised Code, or an application for renewal is pending.”* *“No visible particulate emissions except for 3 minutes during ay 60 minute period.”*

The owner/operator is in violation of both ORC 6111.44 and ORC 6111.04.

To achieve compliance, the owner/operator must:

- a. comply with the requirements stated in 1.a, 1b, 1.c and 1.d above;
- b. immediately cease discharging any leachate from the transfer area to waters of the state;
- c. collect and transport any leachate from the transfer area for treatment at a licensed waste water treatment plant; and
- d. comply with ORC 6111.04 and ORC 6111.44.

West Warehouse

Two large mounds of waste were located in two bays in the west-end of the west warehouse. You said that the waste was from the outdoor transfer area. You said the waste was moved indoors to keep it from getting wet and that the dry waste would be easier to sort out the recyclables. The indoor waste contained woody debris, empty cardboard and plastic drums, tires, cans, bottles, plastic containers, plastic debris, pulverized unrecognizable waste, black sand, numerous paper sacks labeled "Black Beauty."

Ohio EPA considers the west warehouse to be an illegal solid waste transfer facility. Operating an unlicensed, unpermitted solid waste transfer facility is a violation of Ohio's solid waste laws and rules, ORC 3734 and OAC 3745-27. Because the violations for the west warehouse are the same as the transfer area, the violations are simply listed below. The owner/operator is in violation of:

1. **OAC 3745-27-05(C)** Open dumping of solid wastes
2. **ORC 3734.03** Open dumping of solid wastes
3. **ORC 3734.05(A)(1)** License for a solid waste facility
4. **OAC 3745-37-01(A)** License for a solid waste facility
5. **ORC 3734.05(A)(2)** Permit for a solid waste facility
6. **ORC 3734.02(C)** Permit for a solid waste facility
7. **ORC 6111.44** and **ORC 6111.04** Permit for surface water/leachate management compliance, the owner/operator must:

Waste Disposal Area

The disposal area included the west earth berm/soil stockpile south of the break in the west berm and continued south for approximately 450 feet to the southwest corner then east along the south berm/soil stockpile for approximately 190 feet. The width of the berm/soil stockpile ranged from approximately 40 feet to approximately 90 feet. During the June 1, 2011 investigation, test pits were excavated in various locations in the waste disposal area. Solid waste was found in most test pits. Only construction and demolition debris (CDD), mainly clean hard fill, was found in several test pits just south of the light pole located near the center of west berm of the investigation area. The investigation involving test pits on June 1, 2011 confirmed that this area contains buried solid waste. The disposal area looked nearly the same as during the last inspection on November 23, 2011. There was no evidence of waste removal.

Any solid waste disposed on the property is a violation of Ohio's solid waste laws and rules, ORC 3734 and OAC 3745-27. In addition, any CDD disposed on the property is a violation of Ohio's CDD laws and rules, ORC 3714 and OAC 3745-400. Because the violations below are similar to the above violations, most are simply listed. The owner/operator is in violation of:

1. **OAC 3745-27-05(C)** Open dumping of solid wastes

This rule states in part, *"No person shall conduct, permit, or allow open dumping."*

The June 1, 2011 investigation test pits revealed that the berm/soil stockpile contained the following: rubber waste including truck mud flaps, fiber, metal drum, plastic and metal debris, bottles, pop cans, plastic coolers, fabric bulk containers containing unknown gray powder, unknown white powder, furniture cushion, and bags of household garbage.

The buried materials are at least solid wastes and may include hazardous wastes. Further analysis is needed to determine the characteristics of the buried gray and white powders. Therefore, the owner/operator has violated OAC 3745-27-05(C) due to open dumping of solid wastes in the berm/soil stockpiles in the southwest area.

To achieve compliance, the owner/operator must:

- a. immediately stop all open dumping of solid wastes at Bencin's Richfield site and all other properties owned by Bencin;
- b. immediately stop operating as an illegal solid waste landfill at Bencin's Richfield site and all other properties owned by Bencin;

- c. remove and properly dispose of all solid wastes at a licensed solid waste disposal facility and provide copies of the disposal receipts to Ohio EPA; and
- d. all unknown materials like the gray and white powders must be characterized to determine if they are hazardous wastes. All hazardous waste must be disposed of at a licensed hazardous waste facility.

- 2. **ORC 3734.03** Open dumping of solid wastes
- 3. **ORC 3734.05(A)(1)** License for a solid waste facility
- 4. **OAC 3745-37-01(A)** License for a solid waste facility
- 5. **ORC 3734.05(A)(2)** Permit and license for a solid waste facility
- 6. **ORC 3734.02(C)** Permit for a solid waste facility
- 7. **ORC 3734.11(A)** Prohibitions

This law states in part, *“No person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code.”*

The owner/operator is in violation of the above rules and laws and is therefore in violation of ORC 3734.11(A). To achieve compliance, The owner/operator must comply with all applicable Ohio laws and rules.

- 8. **OAC 3745-400-04(B)** Illegal disposal of CDD

This rule 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 . . .”*

CDD was observed in some of the test pits. The CDD included bricks, concrete and woody debris.

To achieve compliance, the owner/operator must:

- a. immediately stop all illegal disposal of CDD at Bencin’s Richfield site and all other properties owned and operated by Bencin;
- b. immediately stop operating as an illegal CDD landfill at Bencin’s Richfield site and all other properties owned and operated by Bencin;

- c. at Bencin's Richfield site and all other properties owned and operated by Bencin, remove and properly dispose of all CDD at a licensed CDD disposal facility and provide copies of the disposal receipts to Ohio EPA; and
- d. at Bencin's Richfield site and all other properties owned and operated by Bencin, dispose of mixtures of solid waste and CDD at a licensed solid waste facility.

9. OAC 3745-37-01(C) License for a CDD facility

This rule states in part, *"No person shall establish, modify, operate or maintain a construction and demolition debris facility without a construction and demolition debris facility license . . ."*

CDD was observed in some of the test pits. The CDD included bricks, concrete and woody debris. The owner/operator has violated OAC 3745-37-01(C) due to failure to obtain a license prior to operating a CDD facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 8.a, 8.b, 8.c and 8.d above.

10. ORC 3714.06(A) License for a CDD facility

This law states in part, *"No person shall operate or maintain a construction and demolition debris facility without an annual construction and demolition debris facility operation license issued by the board of health or the health district in which the facility is located . . ."*

The owner/operator has violated ORC 3714.06(A) due to failure to obtain a license prior to operating a CDD facility.

To achieve compliance, the owner/operator must comply with the requirements stated in 8.a, 8.b, 8.c and 8.d above.

11. ORC 6111.04 Leachate entering waters of the state

Leachate was being discharged through and/or along two black plastic pipes at the west side of the earth berm. The leachate discharging from the black plastic pipes in the southwest area has a dark color. The leachate discharged from the black plastic pipes in the west berm flows into a ditch on the adjacent property.

Because leachate was leaving the site and entering surface water, the leachate is considered a discharge of pollutants to "waters of the state." The owner/operator does not have a National Pollutant Discharge Elimination System (NPDES) permit to

discharge leachate material into waters of the state. Therefore, the owner/operator is in violation of ORC Section 6111.04.

ORC Section 6111.04 states in part, *“No person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state, and any such action is hereby declared to be a public nuisance, except in such cases where the director of environmental protection has issued a valid and unexpired permit, or renewal thereof, as provided in sections 6111.01 to 6111.08 of the Revised Code, or an application for renewal is pending.”*

Our records show that your company has an effective General Industrial Storm Water Permit, 3GR001157*DG. This permit authorizes you to discharge clean uncontaminated storm water runoff. It does not authorize the discharge of pollutants such as leachate. An individual NPDES Permit would be necessary to discharge treated leachate. However, before this agency could issue this permit the proposed permit and treatment must go through Ohio's Antidegradation review in accordance with OAC 3745-1-05. The owner/operator would have to justify the proposed discharge and prove there is no alternative. Since there are several alternatives to this discharge, an approval would be unlikely.

To be eligible to maintain your current General Permit, the owner/operator must immediately cease the discharge of pollutants to waters of the state of Ohio by containing the leachate on-site and hauling it to an approved treatment facility such as a large municipal wastewater treatment plant. This will require pre-approval from this entity. Records proving the leachate is being properly disposed must be submitted to this office. Concurrently, steps must be taken to stop the production of this leachate at this site or any other location such as the Meech Avenue, Cleveland location. If the owner/operator does not comply with the aforementioned, then an Individual NPDES Permit will be required, written specifically for the site, for the discharge of clean uncontaminated storm water runoff. The General Permit will then be revoked. Should you have any questions concerning these permits, you are directed to contact Philip Rhodes, DSW, NEDO at (330) 963-1136, or by e-mail at phil.rhodes@epa.state.oh.us.

Discharging leachate to waters of the state of Ohio without a proper NPDES Permit and installing a treatment device (oil/water separator) is a violation of Ohio Revised Code 6111. The owner/operator is subject to civil and monetary penalties as described in Ohio Revised Code 6111.99.

To achieve compliance, the owner/operator must:

- a. immediately cease discharging leachate to waters of the state;

Mark Malbin
Bencin Trucking
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- b. collect and transport all leachate for treatment at a licensed waste water treatment plant; and
- c. comply with ORC 6111.04.

Comment

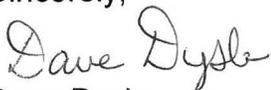
Please send copies of any waste characterizations and disposal receipts to Ohio EPA and Summit County Public Health. If any material has been recycled, please provide a written explanation as well as any copies of receipts or daily logs showing that the material was recycled.

Nothing in this letter shall be construed to authorize any waiver from the requirements of any applicable state or federal laws or regulations. This letter shall not be interpreted to release the owner/operator from responsibility under Chapters 3704., 3714., 3734., or 6111. of the Ohio Revised Code or under the Federal Clean Water or Comprehensive Environmental Response, Compensation, and Liability Acts for remedying conditions resulting from any release of contaminants to the environment.

Please respond in writing to the above violations and comments within 14 days of receipt of this letter. Please include a description and/or schedule for compliance. Please include descriptions of the transfer containers that were used in the attached summary.

If you should have any questions regarding this letter, please call me at (330) 963-1286.

Sincerely,



Dave Dysle
Environmental Specialist
Division of Materials and Waste Management

cc: Kelly Jeter, DMWM, CO
Scott Shane, OSI, CO
John Wellman, AGO, BCIO
Bart Ray, OSI, NEDO
Marlene Kinney, DMWM, NEDO
Phil Rhodes, DSW, NEDO
Tom Kohl, U.S. EPA, CID
Mike Swanson, Richfield Police Department
David Dietz, Village of Richfield
Julie Brown, Summit County Public Health
File: [Sowers/COUN/Bencin/COR/77]