



State of Ohio Environmental Protection Agency

Northwest District Office

347 North Dunbridge Road
Bowling Green, OH 43402-9398

TELE: (419) 352-8461 FAX: (419) 352-8468
www.epa.state.oh.us

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

RE: Paschal Bihn & Sons
Excavating
Lucas County
DHWM, NWDO
Second Notice of
Violation

October 20, 2009

Mr. Dayne Bihn
Paschal Bihn & Sons Excavating
221 North Lallendorf Road
Oregon, OH 43616

Dear Mr. Bihn:

Thank you for sending the letter in response to the Ohio Environmental Protection Agency's (Ohio EPA's) Notice of Violation (NOV) dated September 10, 2009. The letter was received by Ohio EPA on October 1, 2009.

After review of the submitted letter, one violation from the August 19, 2009, compliance evaluation inspection remains outstanding. In order to correct this violation you must submit the required information **within 30 days of receipt of this letter.**

Violations:

1. **Ohio Administrative Code (OAC) Rule 3745-279-22 (C)(1), Used oil storage requirements for generators:** "Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words 'Used Oil'".

Paschal Bihn & Sons Excavating (PB&SE) failed to mark one 55 gallon used oil drum and one used oil drip pan located in the building with the words "Used Oil."

This violation was abated on August 19, 2009.

2. **OAC Rule 3745-279-24, Off-site Shipments of Used Oil by Generators:** "...generators must ensure that their used oil is transported only by transporters who have obtained U.S. EPA identification numbers."



Mr. Dayne Bihn
October 20, 2009
Page Two

Used oil generators have three options for handling their used oil: 1) Generators must have their used oil transported by an entity that has a U.S. EPA identification number and ensure their used oil is recycled; 2) Generators may transport less than 55-gallons of their own used oil to a registered used oil collection center; or 3) Generators may burn its own used oil in an on-site space heater as long as all applicable requirements are met.

PB&SE gave used oil to businesses and homeowners to burn for heating purposes. PB&SE failed to ensure that the used oil was transported by a transporter who had obtained a U.S. EPA identification number.

There are two general options for facilities that generate used oil. 1) The facility can manage and dispose of the used oil as waste. Or, 2) The facility can manage and recycle the used oil.

If a facility chooses to manage the used oil as a waste and dispose of it, then thorough sampling and analysis of the waste must be completed before it can be disposed of as a non-hazardous waste. Generator knowledge that does not include analytical results from the sampling of the used oil will not be accepted for the determination that the used oil is non-hazardous.

If a facility chooses to recycle the used oil, then it has three options to choose from. 1) Have the used oil picked up by a transporter which has a US EPA ID number. 2) Take the used oil to a collection center. Or, 3) burn the used oil on site in a space heater that complies with the requirements found in OAC rule 3745-279-23.

In the letter received by Ohio EPA on October 1, 2009, PB&SE states "When we have enough used oil to get rid of, we will dispose of the used oil properly and send you the proper documentation." This statement reads as if PB&SE will be managing the used oil as a waste. However, this is not what was discussed with Ohio EPA during the inspection.

In order to abate this violation, PB&SE must describe how they will be managing the used oil (as a waste or as used oil that will be recycled). If PB&SE chooses to manage the used oil as a waste, then PB&SE must describe how the used oil will be sampled, what analyses will be run on the used oil, and where the sample will be analyzed. If PB&SE chooses to recycle the used oil, then PB&SE must describe how it will be recycled by choosing one of the following:

Mr. Dayne Bihn
October 20, 2009
Page Three

1) Have the used oil picked up by a transporter which has a US EPA ID number. 2) Take the used oil to a collection center. Or, 3) burn the used oil on site in a space heater that complies with the requirements found in OAC rule 3745-279-23.

Ohio EPA understands that PB&SE does not have a full container of used oil at this time and will dispose/recycle the used oil once the container is full. However, in order to abate this violation Ohio EPA needs more information from PB&SE. Please submit the above requested information within 30 days of receipt of this letter.

General Concerns:

A. Spent Lamps: During the inspection PB&SE stated that spent lamps have not been generated at the site. Ohio EPA contacted the building owner, KLT Investment Group (KLT) on August 10, 2009, to discuss the building maintenance agreement between the owner and renters. KLT informed Ohio EPA that it was up to the renter to perform building maintenance such as changing spent lamps. Therefore, PB&SE will become a generator of spent lamps if PB&SE changes any spent lamps at the building.

This general concern serves as a reminder to PB&SE and is considered addressed.

B. Used Oil Filters: During the inspection Ohio EPA observed two used oil filters draining used oil into a drip pan. It is unclear if PB&SE recycles the used oil filters or if they throw them into the trash as solid waste. Ohio EPA would like to remind PB&SE that OAC Rule 3745-52-11 states that any person who generates a waste must determine if that waste is a hazardous waste. Therefore, PB&SE must evaluate the used oil filters to determine if they are hazardous waste prior to disposing of them in the trash as solid waste.

This general concern serves as a reminder to PB&SE and is considered addressed.

Mr. Dayne Bihn
October 20, 2009
Page Four

If you have any question, please call me at (419)-373-3065. Please send all correspondence **within 30 days of receipt of this letter** to Ohio EPA, Northwest District Office, Attn: Kara Reynolds, 347 North Dunbridge Road, Bowling Green, Ohio 43402.

Sincerely,

Kara Reynolds

Kara Reynolds
Environmental Specialist
Division of Hazardous Waste Management

/lb

cc: Colleen Weaver, DHWM, NWDO.
Kara Reynolds, DHWM, NWDO
Cindy Lohrbach, DHWM, NWDO

~~DHWM, NWDO, Lucas County, File: Paschal Bihn & Sons, Excavating~~

NOTICE:

Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with all applicable regulations.