



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 Korleski, Director

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

September 10, 2009

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

Dear Mr. Bihn:

Thank you for accompanying Ed Pulido and me during the Ohio Environmental Protection Agency's (Ohio EPA's) August 19, 2009, compliance evaluation inspection of Paschal Bihn & Sons Excavating (PB&SE's) facility located at 221 North Lallendorf Road, Oregon, Ohio. We inspected PB&SE to determine its compliance with Ohio's hazardous waste laws as found in Chapter 3734. of the Ohio Revised Code (ORC) and Chapter 3745. of the Ohio Administrative Code (OAC). During the inspection, we also helped you identify ways to prevent pollution by reducing waste.

This letter will explain the violations we found, what you need to do to correct the violations, other general concerns we have, what you need to do to respond to the general concerns, and the pollution prevention opportunities we identified.

PB&SE operates a soil excavating and snow removal business. At the time of the inspection, PB&SE was a non-generator of hazardous waste. However, PB&SE generates used oil from the maintenance of vehicles and will generate spent lamps in the future.

Ohio EPA found the following violations of Ohio's hazardous waste laws. In order to correct these violations you must do the following and send me the required information **within 30 days of receipt of this letter:**

**Violations:**

1. **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'".

Mr. Dayne Bihn  
September 10, 2009  
Page 2

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."

PB&SE marked both containers with the words "Used Oil" while Ohio EPA was on site.

***Therefore, this violation was abated on August 19, 2009.***

As discussed during the inspection and for more information the following fact sheets have been enclosed: The Regulation of Used Oil: An Overview for Ohio Businesses Who Generate Used Oil, dated April 2006; Registered Used Oil Collection Centers, dated April 28, 2009; Used Oil Burners- New Guidance for Rebuttable Presumption, dated April 2008; Used Oil Recyclers, dated August 19, 2009; and Burning Used Oil in a Space Heater-For Businesses, dated July 2009.

As discussed during the inspection, Ohio EPA does not have any information or fact sheets on where to purchase a used oil burner in order to heat the building. However, Ohio EPA recommends contacting your local hardware store or searching the internet for more information on businesses that sell used oil burners.

**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." 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.

In order to abate this violation, PB&SE must choose one of the following and submit the required information to Ohio EPA **within 30 days of receipt of this letter:** **1)** Have the used oil picked up by a transporter which has a US EPA ID number. PB&SE must submit documentation (e.g., bill of lading or contract agreement), which includes the transporter and receiving facility information. Also, PB&SE must describe how the used oil is being recycled by the receiving facility (e.g., reconditioning, re-refining, reusing, or burning for energy recovery).

2) Take the used oil to a collection center. PB&SE must submit documentation of the location of the collection center as well as receipt of the used oil by the collection center. PB&SE must also describe how much used oil is transported to the collection center, by whom, and the owner of the vehicle used in the transportation of the used oil. Or, 3) burn the used oil on site in a space heater that complies with the requirements found in OAC rule 3745-279-23. PB&SE must submit documentation that demonstrates compliance with this rule.

**General Concerns:**

- A. **Spent Lamps:** During the inspection PB&SE stated that spent lamps have not been generated at the site. PB&SE has only been in the building for approximately one year and no lamps have burnt out yet. PB&SE stated that they were unsure if the building owner would perform maintenance such as changing spent lamps.

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.

OAC Rule 3745-52-11, Hazardous Waste Determination, states "Any person who generates a waste, as defined in rule 3745-51-02 of the Administrative Code, must determine if that waste is a hazardous waste..." Therefore, PB&SE must evaluate if the spent lamps are hazardous waste prior to disposing of them in the trash. Spent lamps can contain mercury and other heavy metals which could make them a hazardous waste. Hazardous waste lamps are considered "spent materials" and remain hazardous waste even when recycled. Hazardous waste lamp generators have the option of handling their lamps as hazardous waste or as universal waste. Managing hazardous waste lamps under the universal waste rules eases certain regulations imposed on generators of spent lamps.

It should also be noted that even though green tipped lamps or "environmentally friendly" lamps are sometimes guaranteed by the manufacturers to pass a Toxicity Characteristic Leaching Procedure (TCLP) test, more information is needed to dispose of these lamps as solid waste. Most manufacturers base this guarantee on the amount of mercury contained in the lamp. Without analytical results showing a representative sample of these lamps passing the TCLP test for ALL Resource Conservation and Recovery Act (RCRA) metals (mercury, cadmium, lead, etc.), these lamps cannot be disposed of as solid waste. Spent lamps can contain other RCRA metals such as cadmium and lead which could be above the hazardous waste limits.

Mr. Dayne Bihn  
September 10, 2009  
Page 4

For more information the following fact sheets on spent lamps have been enclosed: Universal Waste Rules for Handlers of Lamps, dated June 2005; Fluorescent Lamps: What You Should Know, dated January 2007; Universal Waste, dated December 2004; and Computer, Fluorescent Lamp and Ballast Recyclers, dated March 2009.

**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 recycle 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 waste evaluation may involve sampling the used oil filters to determine if they contain hazardous characteristics. For more information the following fact sheets have been enclosed: Identifying Your Hazardous Waste, dated November 2006; Use of Generator Knowledge In Complying with OAC rule 3745-52-11 Hazardous Waste Evaluation, dated July 18, 2005; Violations Most Frequently Cited by Division of Hazardous Waste Management Inspectors, printed March 25, 2009; and Commercial Environmental Laboratories, printed March 25, 2009.

Ohio EPA will issue an EPA ID number to track our inspection activity at PB&SE. PB&SE cannot use this number for manifesting hazardous waste shipments. If PB&SE wants to use an EPA ID number for manifesting and other hazardous waste, used oil or universal waste activities, PB&SE must complete and submit a Notification of Regulated Waste Activity form (EPA Form 9029 (Rev. 11/2002)) to Ohio EPA. This form is available on our Web page at <http://www.epa.state.oh.us/dhwm/notiform.html> or PB&SE can call the Division of Hazardous Waste Management, Central Office, RIS at (614) 644-2977 and a copy will be sent through the mail.

As we discussed during the inspection, you may be able to reduce the waste your company generates. If you find ways to recycle, reduce, or altogether eliminate the amount of waste that your company generates you may be able to reduce treatment and disposal costs as well as regulatory requirements. Ohio EPA has helpful information about pollution prevention at the following web address: <http://www.epa.ohio.gov/ocapp/>. If you would like to be considered for a free, non-regulatory on-site pollution prevention assessment, or if you would like more information about pollution prevention assessments, please contact me at the number listed below. The Ohio Department of Development's Office of Energy Efficiency may also be able to help with energy efficiency issues. Their website is at <http://www.development.ohio.gov/cdd/oeef/>.

Mr. Dayne Bihn  
September 10, 2009  
Page 5

The Division of Hazardous Waste Management has created an electronic news service to provide you with quick and timely updates on events and news related to hazardous waste activities in Ohio. If you haven't already, we encourage you to sign up for this free service. You can find more information at the following web link: [http://ohioepa.custhelp.com/cgi-bin/ohioepa.cfg/php/enduser/doc\\_serve.php?2=subscriptionpage](http://ohioepa.custhelp.com/cgi-bin/ohioepa.cfg/php/enduser/doc_serve.php?2=subscriptionpage) . Please feel free to share this with your colleagues.

Enclosed you will find a copy of the checklists that were completed during the inspection. Should you have any questions, please feel free to call me at (419) 373-3065. You can find copies of the rules and other information on the division's web page at <http://www.epa.ohio.gov/dhwm/> .

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

/csl

Enclosures

cc: Colleen Weaver, DHWM, NWDO  
Kara Reynolds, DHWM, NWDO  
Cindy Lohrbach, DHWM, NWDO  
DHWM, NWDO Lucas County File: Lucas County General 2009-

**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.

**Ohio Environmental Protection Agency  
RCRA SUBTITLE C SITE  
IDENTIFICATION/VERIFICATION FORM**

For Ohio EPA use only

E-mail this completed form to [kristina.durnell@epa.state.oh.us](mailto:kristina.durnell@epa.state.oh.us)  
or mail it to Kristina Durnell, Central Office

<b>Site EPA ID No.</b>	EPA ID Number:	
<b>Site Name</b>	Name: <b>Paschal Bihn &amp; Sons Excavating</b>	Website: <b>www.pbands.com</b> (Optional)
<b>Site Location Information</b>	Street Address: <b>221 North Lallendorf Road</b>	State: <b>OH</b>
	City, Town, or Village: <b>Oregon</b>	Zip Code: <b>43616</b>
	County Name: <b>Lucas</b>	
<b>Site Land Type</b> (check only one)	Private <input checked="" type="checkbox"/>	County <input type="checkbox"/>
<b>NAICS code(s)</b> <a href="http://www.census.gov/epcd/www/naics.html">www.census.gov/epcd/www/naics.html</a>	District <input type="checkbox"/>	Federal <input type="checkbox"/>
	Indian <input type="checkbox"/>	Municipal <input type="checkbox"/>
	State <input type="checkbox"/>	Other <input type="checkbox"/>

<b>Facility Representative</b>	First Name: <b>Dayne</b>	Mi:	Last Name: <b>Bihn</b>
Additional names can be recorded in number 12	Phone Number: <b>419-461-1658</b>		Phone Number Extension:
Only provide address information if it is different than the site address	E-Mail Address:		Fax Number Extension:
	Fax Number: <b>419-697-1868</b>		
	Street or P.O. Box:		
	City, Town or Village:		
	State:		Zip Code:

<b>Legal Owner And Operator of the Site.</b> List Additional Owners and/or Operators in the Comment Section or on another copy of this form page	Name of Site's Legal Owner: <b>KLT Investment Group (Brad and Stacy Clark)</b>	Date Became Owner (mm/dd/yyyy): <b>~ 08-2008</b>
	Owner Private County District Federal Indian Municipal State Other Type: <input checked="" type="checkbox"/> <input type="checkbox"/>	
	Street or P.O. Box: <b>P.O. Box 167705</b>	
	City, Town or Village: <b>Oregon</b>	Owner Phone #: <b>419-574-1200</b>
	State: <b>Ohio</b>	Country: <b>USA</b> Zip Code: <b>43616</b>
	Name of Site's Operator: <b>Paschal Bihn &amp; Sons Excavating</b>	Date Became Operator (mm/dd/yyyy): <b>~ August 2008</b>
	Operator Private County District Federal Indian Municipal State Other Type: <input checked="" type="checkbox"/> <input type="checkbox"/>	
	Street or P.O. Box: <b>221 North Lallendorf Road</b>	
	City, Town or Village: <b>Oregon</b>	Operator Phone #: <b>419-693-8845</b>
	State: <b>Ohio</b>	United States Zip Code: <b>43616</b>

**VIOLATIONS CITED?**  Yes  No

<b>TYPE OF HANDLER- A MINIMUM OF ONE BOX MUST BE CHECKED</b>		
<input checked="" type="checkbox"/> Not a HW Generator	<input type="checkbox"/> UNKNOWN: Cited for violation of 3745-52-11	<input type="checkbox"/> Large Quantity Generator (LQG)
		<input type="checkbox"/> Small Quantity Generator (SQG)
		<input type="checkbox"/> Conditionally Exempt Small Quantity Generator
		<input type="checkbox"/> U.S. Importer of Hazardous Waste
		<input type="checkbox"/> Mixed Waste (Hazardous and Radioactive) Generator

**TYPE OF REGULATED WASTE ACTIVITY (MARK "X" IN ALL OF THE APPROPRIATE BOXES)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recycler of Hazardous Waste                    | <input type="checkbox"/> Exempt Boiler and/or Industrial Furnace       |
| <input type="checkbox"/> Underground Injection Control Facility         | <input type="checkbox"/> Small Quantity On-Site Burner Exemption       |
| <input type="checkbox"/> Hazardous Waste Transporter                    | <input type="checkbox"/> Smelting, Melting, Refining Furnace Exemption |
| <input type="checkbox"/> Treater, Storer or Disposer of Hazardous Waste |  |

**UNIVERSAL WASTE ACTIVITIES (INDICATE TYPES OF UNIVERSAL WASTE MANAGED)**

(CHECK ALL BOXES THAT APPLY)

- |   |   |
|---|---|
| <input type="checkbox"/> Small Quantity Handler of Universal Waste                                    | <input type="checkbox"/> Destination Facility for Universal Waste |
| <input type="checkbox"/> Large Quantity Handler of Universal Waste<br>(accumulates 5,000 kg. or more) |   |

**CHECK ALL BOXES BELOW THAT APPLY FOR THE TYPES OF UNIVERSAL WASTE THE FACILITY MANAGES**

- Batteries
- Pesticides
- Mercury containing equipment
- Lamps

**USED OIL ACTIVITIES (INDICATE TYPE(S) OF ACTIVITY(S))**

- Used Oil Generator
- Used Oil Transporter
- Used Oil Transfer Facility
- Used Oil Processor
- Used Oil Re-refiner
- Off-Specification Used Oil Burner
- Used Oil Fuel Marketer Who Directs Shipment of Off-Spec. Oil
- Used Oil Fuel Marketer to Off-Specification Used Oil Burner

**Waste Codes for Federally Regulated Hazardous Wastes.** Please list the codes for the federally regulated hazardous waste handled at the site. List them in the order they are presented in the regulations (e.g., D001, D003, F007, U112). Use an additional page if more space is needed. If there are more than 7 waste codes and they are the same as listed in the most recent RCRAInfo source record, you do not need to list them all. Instead just indicate the date of the most recent source record.

**COMMENTS: USE THIS AREA TO DESCRIBE WHETHER THE INSPECTION WAS ANNOUNCED, WHETHER THE WASTE IS STORED IN TANKS OR CONTAINERS, ETC.**

Announced       Yes     No      Additional Facility Representatives:      **Brian Focht**  
 Tanks             Yes     No      Other Comments: **Spent lamps will be generated in the future.**  
 Containers       Yes     No

Name of Inspector(s)	Name of Inspector(s)	Date of Inspection/Time (mm/dd/yyyy) (hh:mm)
<b>Kara Reynolds</b>	<b>Ed Pulido</b>	<b>8/19/2009 10:30 AM</b>

**OPTIONAL CERTIFICATION.** I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature of Owner, Operator, or an Authorized Representative	Name and Title (Print)	Date (mm/dd/yyyy)
---	------------------------	-------------------

**USED OIL INSPECTION CHECKLIST  
GENERATORS, COLLECTION CENTERS AND AGGREGATION POINTS**

**NOTE:** 1. A facility is subject to the federal SPCC regulations (40 CFR 112) if it is non-transportation related (e.g., fixed) and has an aggregate above ground storage capacity greater than 1,320 gallons or a total underground storage capacity greater than 42,000 gallons of oil (including used oil), and there is reasonable expectation of a discharge to navigable waters.

2. Inspectors can check BUSTR's web-site at [https://www.comapps.ohio.gov/sfm/fire\\_apps/bust/bustr/PublicInquiry.asp](https://www.comapps.ohio.gov/sfm/fire_apps/bust/bustr/PublicInquiry.asp) to determine if a UST containing used oil is registered with BUSTR. Inspectors may call BUSTR at 614-752-7938 or a BUSTR site coordinator to report an unregistered UST or a UST that appears to not be in compliance with BUSTR regulations. A list of BUSTR coordinators by county are at: [https://www.comapps.ohio.gov/sfm/fire\\_apps/bust/bustr/SearchByCounty.asp](https://www.comapps.ohio.gov/sfm/fire_apps/bust/bustr/SearchByCounty.asp).

**PROHIBITIONS**

1. Does the generator manage used oil in a surface impoundment or waste pile? Yes  No  N/A   
If yes:

a. Is the surface impoundment or waste pile regulated as a hazardous waste management unit? [3745-279-12(A)] Yes  No  N/A

**NOTE:** For example, used oil contaminated scrap metal stored in a pile.

2. Is used oil used as a dust suppressant? [3745-279-12(B)] Yes  No  N/A

3. Is off-specification used oil fuel burned for energy recovery in devices specified in 3745-279-12(C)? Yes  No  N/A

**NOTE:** Multiple used oil checklists may be applicable if used oil handler is performing multiple tasks (e.g., if generating used oil and shipping directly to a burner, complete generator and marketer checklists at a minimum).

**GENERATOR STANDARDS**

4. Does the generator mix hazardous waste with used oil? If so, Yes  No  N/A

a. Is the mixture managed as specified in 3745-279-10(B)? [3745-279-21(A)] Yes  No  N/A

**NOTE:** Used Oil mixed with listed (3745-51-30 to 3745-51-35) or characteristic (3745-51-20 to 3745-51-24) hazardous waste are subject to regulation as a hazardous waste, unless the listed hazardous waste is listed solely because it exhibits a hazardous characteristic, and the resultant mixtures do not exhibit a characteristic. Mixtures of used oil and CESQG hazardous waste are subject to OAC Chapter 3745-279.

5. Does the generator of a used oil containing greater than 1,000 ppm total halogens manage the used oil as a hazardous waste unless the presumption is rebutted successfully? [3745-279-21(B)] Yes  No  N/A

**NOTE:** If used oil contains greater than 1000 ppm total halogens, it is presumed to be listed hazardous waste until the presumption is successfully rebutted.

6. Does the generator store used oil in tanks; or containers; or a unit(s) subject to regulation as a hazardous waste management unit? [3745-279-22(A)] Yes  No  N/A

7. Are containers and aboveground tanks used to store used oil in good condition with no visible leaks? [3745-279-22(B)] Yes  No  N/A

8. Are containers, above ground tanks, and fill pipes used for underground tanks clearly labeled or marked "Used Oil?" [3745-279-22(C)] Yes  No  N/A

9. Has the generator, upon detection of a release of used oil, done the following: [3745-279-22(D)] Yes  No  N/A

a. Stopped the release? Yes  No  N/A

b. Contained the release? Yes  No  N/A

c. Cleaned up and properly managed the used oil and other materials? Yes  No  N/A

d. Repaired or replaced the containers or tanks prior to returning them to service, if necessary? Yes  No  N/A

**ON-SITE BURNING IN SPACE HEATER**

10.	Does the generator burn used oil in used-oil fired space heaters? [3745-279-23] If so:		
	a.	Does the heater burn only used oil that owner/operator generates or used oil received from household do-it-yourself (DIY) used oil generators?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
	b.	Is the heater designed to have a maximum capacity of not more than 0.5 million BTU per hour?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
	c.	Are the combustion gases from heater vented to the ambient air?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>

*NOTE: Ash accumulated in a space heater must be managed in accordance with 3745-279-10(E).*

**GENERATOR TRANSPORTATION**

11.	Does the generator have the used oil hauled only by transporters that have obtained a U.S. EPA ID#? [3745-279-24]		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
12.	If the generator self-transportes used oil to an approved collection site or to an aggregation point owned by the generator: [3745-279-24]		
	a.	Does the generator transport used oil in a vehicle owned by the generator or an employee of the generator? [3745-279-24]	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
	b.	Does the generator transport more than 55 gallons of used oil at any time? [3745-279-24]	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>

*NOTE: Used oil generators may arrange for used oil to be transported by a transporter without a U.S. EPA ID # if the used oil is reclaimed under a contractual agreement (i.e., tolling arrangement).*

**COLLECTION CENTERS AND AGGREGATION POINTS**

13.	Is the DIY used oil collection center in compliance with the generator standards in 3745-279-20 to 3745-279-24? [3745-279-30]		Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
14.	Is the non-DIY used oil collection center registered with Ohio EPA? [3745-279-31]		Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
15.	Is the used oil aggregation point in compliance with the generator standards in 3745-279-20 to 3745-279-24? [3745-279-32]		Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>

*NOTE: Complete Used Oil Generator and any other applicable used oil handler checklist (e.g., marketer, burner, etc.) for used oil collection centers and aggregation points.*