



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

April 23, 2013

**CERTIFIED MAIL**

Ms. Helen Murphy  
14509 Eaton Pike  
New Lebanon, Ohio 45345

**RE: Open Dumping Notice of Violation  
14509 Eaton Pike, Montgomery County**

Dear Ms. Murphy:

On April 11, 2013, Michael Kautz with Public Health – Dayton and Montgomery County and I, representing the Ohio Environmental Protection Agency (Ohio EPA), Southwest District Office (SWDO), Division of Materials and Waste Management (DMWM), conducted a site visit on your property located at 14509 Eaton Pike, (Parcel Numbers L5316510 0049 and 0050) in New Lebanon, Montgomery County, Ohio. The inspection was conducted to determine if solid waste (including scrap tires) and construction and demolition debris (C&DD) remain at this address.

During the April 11, 2013 inspection, I observed the following:

1. Multiple piles of scrap tires and scattered scrap tires across the property were observed. It is estimated that approximately 80,000 scrap tires of various sizes remain on the property. Scrap tires are defined as a solid waste.
2. The property is littered with miscellaneous solid waste, C&DD and the burnt remains of scrap tires and various burn areas across the property. The piles of miscellaneous solid wastes included but were not limited to the following items: carpet, auto seats, toilets, scrap metal, aluminum cans, glass, bottles, paper and clothing. The C&DD included roofing shingles and remains of house trailers.



**Definitions:**

Solid waste is defined under Ohio Administrative Code (OAC) Rule 3745-27-01(S)(23), which states in part:

"Solid waste" means such unwanted residual solid or semisolid material, including but not limited to, garbage, **scrap tires**, combustible and noncombustible material, street dirt and debris, as results from industrial, commercial, agricultural, and community operations ...

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.*

Construction and Demolition Debris is defined under OAC Rule 3745-400-01(F), which states in part:

*“Construction and demolition debris” or “debris” means those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways...*

OAC Rule 3745-400-04(A) states in part:

*Construction and demolition debris shall be disposed of only by the following methods or combination thereof:*

- 1. Disposal in a licensed construction and demolition debris facility*
- 2. Disposal in a solid waste disposal facility...*

### **Violations:**

Disposal of solid waste and C&DD in an unlicensed solid waste facility and/or C&DD facility constitutes open dumping / illegal disposal and places the property owner in violation of the following Solid Waste and C&DD Laws and Regulations:

1. The open dumping and burning of solid wastes including tires observed on this property is a violation of Ohio Revised Code Section 3734.03, which states in part:

*“No person shall dispose of solid wastes by open burning or open dumping...”*

2. Open Dumping is also a violation of OAC Rule 3745-27-05(C), which states in part:

*“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”.*

3. The above violations of the ORC and the OAC constitute a violation of ORC Section 3734.11(A), which states:

*"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".*

4. The illegal disposal of C&DD on the property is also a violation of 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."*

5. Scrap tires on the property were observed to have water in them. The owner's failure to keep the tires free of water is a violation of OAC Rule 3745-27-60(C)(1)(b) which states in part:

*"Store scrap tires such that water does not accumulate in scrap tires or containers. Tires shall be kept free of water at all times."*

6. Scrap tire piles are greater than two thousand five hundred square feet in basal area. This is a violation of OAC Rule 3745-27-60(B)(7)(a) which states in part:

*Individual scrap tire storage piles shall be no greater than two thousand five hundred square feet in basal area..."*

7. Combustible material; including weeds, brush, leaves, and tree debris, was present in and around the scrap tires. This is a violation of OAC Rule 3745-27-60(B)(11) which states in part:

*"Fire breaks shall be maintained free of all combustible material including but not limited to weeds, leaves, and debris."*

8. There are no fire lanes around the scrap tires. This is a violation of OAC Rule 3745-27-60(B)(7)(e) which states in part:

*"Sufficient fire breaks shall be maintained to allow access of emergency vehicles at all times to, around and between the scrap tire storage piles and areas."*

Improper storage of scrap tires poses several potential problems for the local residents, environment, and the emergency crews in the area. Scrap tires provide an optimal breeding ground for mosquitoes. Mosquitoes identified at tire piles in Ohio can carry St. Louis Encephalitis, La Crosse Encephalitis, Yellow fever, Dengue Fever and West Nile Virus.

Please be advised that scrap tires can only legally be hauled in loads of 10 (ten) or fewer scrap tires or in any number by a registered scrap tire transporter (see attached list) in accordance with OAC Rule 3745-27-54(A)(1) which states:

*"Any person transporting scrap tires in Ohio shall comply with the registration requirements of this rule, with the standards for transportation of scrap tires in rule 3745-27-56 of the Administrative Code, and with the use of shipping papers in rule 3745-27-57 of the Administrative Code. Specific exclusions in paragraph (A)(2) of this rule apply only to the requirement to register as a scrap tire transporter and do not exclude anyone from the requirement to comply with the standards for transportation of scrap tires and the use of shipping papers."*

**Corrective Actions:**

**The acceptance and disposal of solid waste/C&DD on the property must cease immediately and corrections of the violations cited herein are expected to begin immediately.**

- This letter serves to inform you that the solid wastes and C&DD on your property must be removed and taken to a licensed facility for proper disposal (e.g., solid waste in a licensed sanitary landfill and scrap tires to a licensed scrap tire disposal facility).
- Please provide, at a minimum, a time frame for removal of all debris and an action plan for the removal. The plan must also contain the location of the licensed facility where debris will be taken for proper disposal. The plan must also contain milestones projecting completion of work by day and/or week.
- Receipts documenting proper disposal must be submitted to Ohio EPA, Southwest District Office (SWDO), Division of Materials and Waste Management (DMWM) at the letterhead address, attention Jill Olberding.
- A re-inspection will be scheduled to determine the clean-up is complete to document your return to compliance with Ohio solid waste and C&DD Laws and Regulations.

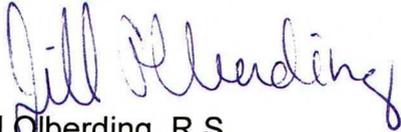
Please respond in writing within 15 (fifteen) days of receipt of this correspondence regarding your remedy and implementation schedule in regards to the aforementioned violations. Failure to comply with this Notice of Violation could result in escalated enforcement.

Notice of Violation  
14509 Eaton Pike, Montgomery County  
April 23, 2013  
Page 6

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.

If you have any questions, please contact me at (937) 285-6094.

Sincerely,

A handwritten signature in blue ink that reads "Jill Olberding". The signature is written in a cursive style with a large initial "J".

Jill Olberding, R.S.  
Environmental Specialist  
Division of Materials and Waste Management

JO/kb

cc: Michael Kautz, Public Health – Dayton and Montgomery County

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee
1. Article Addressed to:  <div style="border: 1px solid black; padding: 5px; text-align: center;">             MS. HELEN MURPHY              14509 EATON PIKE              NEW LEBANON, OHIO 45345           </div>	B. Received by (Printed Name) C. Date of Delivery <i>Helen Murphy</i> 4-24-13
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
2. Article Number (Transfer from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.  4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
S Form 3811, August 2001	Domestic Return Receipt 102595-02-M-1540

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Sent To

Street, Apt. No.,  
or PO Box No. MS. HELEN MURPHY  
14509 EATON PIKE  
City, State, ZIP+4 NEW LEBANON, OHIO 45345

PS Form 3800, June 2002 See Reverse for Instructions

7005 2570 0001 6229 3649