Ohio EPA
40 years and moving forward

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

June 17, 2013

MUSKINGUM COUNTY
SITE – BURLEY CLAY
NOV

32 Inc.
P.O. Box 54
Roseville, Ohio 43777

To Whom it May Concern:

On June 12, 2013, the Ohio Environmental Protection Agency (Ohio EPA) performed an inspection of Burley Clay Products in Roseville, Ohio. The purpose of our inspection was to document solid waste management practices currently being employed at the facility. It was noted that all clay wastes were being recycled and no additional waste was being placed in the historic fill area behind the facility. As such, the changes in waste management implemented in late 2009 appear to be in compliance with Ohio regulations with respect to all new process clay wastes.

Please be advised that under OAC Rule 3745-400-01(E), clean hard fill is defined as "construction and demolition debris which consists only of..." The clay waste materials produced by Burley Clay are manufacturing wastes, not construction or demolition debris. As such, the rules governing clean hard fill are not applicable to this material. The use of a solid waste as fill material could only be approved through an Integrated Alternative Waste Management Program (IAWMP), as detailed by OAC Rule 3745-27-05(A)(4). Ohio EPA has no record of Burley Clay applying for or receiving an IAWMP for the clay waste materials.

As such, Ohio EPA considers the historic fill area as open dumping of a solid waste.

Burley Clay Products remains in violation of Ohio Revised Code (ORC) chapter 3734.03 and Ohio Administrative Code (OAC) 3745-27-05(C).

ORC 3734.03 states in part:

> ORC 3734.03 - No person shall dispose of solid wastes by open dumping or open burning.

OAC 3745-27-05(C) states:

> OAC 3745-27-05(C) - No person shall conduct, permit, or allow open dumping.

Ohio EPA recognizes the value of the evaluation and analysis provided in your April 15, 2010 correspondence and appreciate that Burley Clay has been cooperative in finding a resolution to this issue. Please be advised, however, that the only remedy expressly acceptable under the current rules and regulations is removal of the waste material. Any remedy other than removal of waste (i.e. on-site closure) could only be approved through a negotiated settlement agreement with Ohio EPA.

Please respond to this correspondence within 14 days of receipt. Your response should include details of your actions taken to deal with the historic open dumpsite on your property.

If you have any questions, please feel free to contact me at this office. You can reach me either by mail or by calling me at (740) 380-5228.

Sincerely,

Erika Jackson
Environmental Specialist II
Division of Materials and Waste Management

EJ/mr

cc: Christopher Ward, Calfee, Halter & Griswold LLP
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