



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

June 3, 2013

CERTIFIED MAIL

IKO Production Inc.
120 Hay Road
Wilmington, DE 19809

and

CT Corporation System
815 Superior Avenue, N.E.
Cleveland, Ohio 44114

**RE: Notice of Violation
Open Dumping at Property located at 1200 South Main Street, Franklin, Ohio**

Dear Agent or Officer of IKO Production, Inc.:

On May 21, 2013, I visited the city of Franklin property located at 1200 South Main Street, Franklin, Ohio, to determine compliance with Ohio's solid waste laws, Ohio Revised Code (ORC) 3734 and Ohio Administrative Code (OAC) 3745, and to obtain an estimate of the amount of roofing shingles and roofing materials openly dumped on the property. Ohio EPA estimates measurement of the four-sided pile to be approximately 529 feet by 439 feet by 182 feet by 54 feet, and the height of the pile was estimated at approximately 15 feet. Rough estimates place the volume of the solid waste pile, including shingles, roofing materials and Granulated Bitumus Shingle Material ("GBSM") to be approximately 40,000 cubic yards of material. During my visit on May 21, 2013, I observed that no activity has occurred to abate the violations cited in Ohio EPA correspondence dated February 20, 2013. Therefore, IKO Production continues to remain out of compliance with the Ohio Revised Code (ORC) and the Ohio Administrative Code (OAC).

IKO Production, Inc. owned and operated an asphalt shingle manufacturing plant on property located at 1200 S. Main St., Franklin, Warren County, Ohio, 45005, Parcel No. 03-01-476-002 ("the Property") between January 16, 1992 and October 3, 2008. IKO Manufacturing Inc., an affiliate of IKO Production, Inc., acquired title to the property located at 1200 S. Main St., Franklin, Ohio, 45005, Parcel No. 03-01-476-002 on December 30, 1981, and operated a shingle and roofing manufacturing facility on the Property until transferring the property to IKO Production, Inc. on January 16, 1992.

The OAC and the ORC specifically prohibit open dumping of solid wastes. The ORC Section 3734.01(I) defines open dumping, in relevant part, as “the depositing of solid wastes into a body of 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”.

The open dump site located at 1200 South Main, Franklin, Ohio is not a licensed or permitted solid waste disposal facility under ORC Chapter 3734. IKO Production Inc.’s disposal of solid waste in an unlicensed solid waste facility constitutes open dumping.

The ORC Section 3734.01(E) defines solid wastes as:

“Solid wastes” means such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. “Solid wastes” does not include any material that is an infectious waste or a hazardous waste.

Ohio EPA has determined that the shingles and roofing materials are unwanted residual solid or semisolid material resulting from IKO Production Inc.’s industrial or commercial operations, and thereby constitute solid wastes.

The ORC Section 3734.01(F) defines disposal as:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid wastes or hazardous waste into or on any land or ground or surface water or into the air, except if the disposition or placement constitutes storage or treatment or, if the solid wastes consist of scrap tires, the disposition or placement constitutes a beneficial use or occurs at a scrap tire recovery facility licensed under section 3734.81 of the Revised Code.

Ohio EPA has determined that the shingles and roofing materials placed, dumped or deposited on the ground or injected under the ground by IKO Production Inc. on the property located at 1200 South Main, Franklin, are by definition the disposal of solid wastes.

ORC Section 3734.03 provides in relevant part “[n]o person shall dispose of solid wastes by open burning or open dumping...”

OAC Rule 3745-27-05(C) provides in relevant part: “[n]o 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."

ORC Section 3734.11(A) provides in relevant part: "No person shall violate any section of this chapter, any rule adopted under it..."

IKO Production, Inc. is in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of residual roofing shingles and roofing materials resulting from its industrial or commercial operation on the Property located at 1200 South Main, Franklin, Ohio. The property located at 1200 South Main, Franklin, Ohio is not licensed pursuant to ORC Section 3734.05(A) or permitted pursuant to ORC Section 3734.02(C).

In a letter dated September 24, 1992, a representative of IKO Production, Inc. set forth a proposal to accumulate GBSM on the property located at 1200 S. Main St., Franklin, Ohio, 45005. Specifically, IKO Production, Inc. requested approval to amass and store a 2,000 ton stockpile of GBSM to supply to hot mix paving companies. In a letter dated November 04, 1992, a representative of IKO Production, Inc. stated: "The actual composition of the material is described in the attached MSDS. With this material, we produce a product called GBSM (Granulated Bitumus Shingle Material). GBSM is shingle material that is not suitable for actual use as roofing and has been shredded to a 1/2" particle size. No other products are mixed with the shredded material. The GBSM is staged on site prior to shipment as a raw material to hot mix asphalt paving plants. We would like your approval to store both the shredded and unshredded material outside, within the fence line of our complex."

In correspondence dated November 9, 1992, Ohio EPA, SWDO sent a response to IKO Production, Inc.'s letter dated September 24, 1992 regarding the GBSM for hot mix pavement, stating: "This office has determined that this would be a favorable alternative use for this material as opposed to landfilling. Therefore, this material may be stockpiled at your location for supply to the hot mix paving companies. However, there are several items I would like to further address.

- 1) In your correspondence to Ohio EPA Central District Office, you indicated that this material did not fall under the definition of a solid waste per the Ohio Administrative Code (OAC) section 3745-27-01(iii). For disposal purposes, this material is considered a solid waste. Should the market for its alternative use become unavailable, this material must be disposed of as solid waste.
- 2) This material may be stored at your facility provided it does not create a public health nuisance.
- 3) A monthly record must be maintained as to the quantity of material being stored and quantity shipped as a raw material to the hot mix asphalt paving plants.

As of October 3, 2008, IKO Production, Inc. no longer owned the Property, had not found a market for the alternative use of the stored GBSM supply to hot mix paving companies, and abandoned and allowed the residual shingle materials to remain on the Property constituting disposal of solid waste as that term is defined in ORC Section 3734.01(F).

In violation of ORC Section 3734.03, IKO Production Inc. open dumped by unlawfully disposing of solid waste, including unwanted GBSM and residual roofing and shingle materials resulting from its industrial or commercial shingle manufacturing operation by placing, dumping, injecting or depositing such materials underground or on the ground of the property located at 1200 South Main, Franklin, Ohio on or before October 3, 2008.

To date, IKO Production Inc. has failed to demonstrate that it has removed and properly disposed of the solid waste, in accordance with ORC Chapter 3734, which it open dumped in violation of ORC Chapter 3734 and OAC Chapter 3745 at the Franklin, Ohio property.

To return to compliance with Ohio law, IKO Production Inc. is required to take the following corrective actions to abate the aforementioned violations:

- Remove and properly dispose or otherwise manage all of the roofing materials unlawfully deposited or placed on the property located at 1200 South Main, Franklin, Ohio in accordance with ORC Chapter 3734.
- Provide a work plan that contains, at a minimum, a time frame for removal of all waste roofing materials on the property located at 1200 South Main, Franklin, Ohio and an action plan for the removal. The plan must also contain the location of the licensed facility where the shingles and roofing materials will be taken for proper disposal. The plan must also contain milestones projecting completion of work by day and/or week.
- Submit receipts documenting proper disposal to me at Ohio EPA, Southwest District Office (SWDO), Division of Materials & Waste Management (DMWM) at the letterhead address.

To the extent that IKO Production Inc. is denied access by the current property owner, the city of Franklin, to abate the violations, IKO Production Inc. should promptly notify Ohio EPA in writing of the steps that IKO Production Inc. has taken to attempt to obtain access from the current property owner. Please provide copies of all access agreements related to the Franklin Property obtained by IKO Production, Inc. to Ohio EPA upon request. Ohio EPA may, as it deems appropriate, assist IKO Production, Inc. in obtaining access.

Ohio EPA will continue to conduct periodic inspections to monitor clean-up progress, to ultimately verify that the clean-up is complete and document that IKO Production Inc. has returned to compliance with Ohio Law.

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Please respond in writing within fourteen (14) days of receipt of this correspondence regarding IKO Production, Inc.'s implementation schedule with regard to the aforementioned violations.

IKO Production, Inc. must immediately take the necessary measures to return to compliance with Ohio's environmental laws. Documentation should be submitted to this office demonstrating abatement of existing violations. Please be advised that violations cited above will continue until the violations have been properly abated. Failure to comply with Chapter 3734 of the Ohio Revised Code and rules promulgated thereunder may result in a civil penalty of up to \$10,000 per day for each violation. It is imperative that IKO Production, Inc. returns to compliance. If circumstances delay the abatement of violations, IKO Production, Inc. is requested to submit written correspondence of the steps that will be taken by a certain date to attain compliance.

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 or operator, or others, from responsibility under Chapters 3704, 3714, 3734, or 6111 of the Ohio Revised Code or under the Federal Clean Water Act, Resource Conservation and Recovery Act, or Comprehensive Environmental Response, Compensation, and Liability Act for remedying conditions resulting from any release of contaminants to the environment.

If you have any questions, please contact me at (937) 285-6648 or by email at Pat.Willoughby@epa.ohio.gov.

Sincerely,



Pat Willoughby, R.S.
Environmental Specialist
Division of Materials and Waste Management

PW/tb

cc: Dennis Murray, Director of Environmental Health, Warren County Health Department

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Hay Road
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