Ohio EPA
40 years and moving forward

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

Re: Case No. 10-54
8075 Jericho Road
Defiance County
Notice of Violation

July 10, 2013

Ms. Tina Custer
8075 Jericho Road
Hicksville, Ohio 43526

Dear Ms. Custer:

On June 21, 2013, I, representing the Ohio Environmental Protection Agency (Ohio EPA), Division of Materials and Waste Management (DMWM), conducted a partial inspection of a property located at 8075 Jericho Road, Hicksville, Ohio, in Defiance County (Property). The Property is identified as Parcel G1900290006000 according to the Defiance County Auditor and you are identified as the owner of said parcel.

This inspection was conducted to assess the progress of abating violations sited during previous inspections with the most recent inspection being May 3, 2011.

Description of Ohio EPA's observations of the Property:

Upon arrival, solid waste (including scrap tires) and construction and demolition debris was observed on the ground around mobile homes located on the Property. A short discussion with Mr. Daniel Custer indicated very little progress has been made in regard to abating the previously cited violations and only a "few" tires have been removed from the Property.

"Solid waste" is defined in OAC Rule 3745-27-01(S)(23) as (in pertinent part):

> ... 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, 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, ..., and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. Solid waste does not include any material that is an infectious waste or a hazardous waste.

"Scrap tire" is defined in OAC 3745-27-01(S)(6) as (in pertinent part):

> ...a type of solid waste and means any unwanted or discarded tire, regardless of size, that has been removed from its original use. "Scrap tire" includes all whole scrap tires and pieces of scrap tires which are readily identifiable as parts of scrap tires by visual inspection.

For purposes of this definition, "unwanted" means the original scrap tire generator, original owner or manufacturer of the tire no longer wants to use, or is unable to use the tire for its original purpose, and "discarded" means the original scrap tire generator, original owner, or manufacturer of the tire has otherwise managed the tire in such a manner that disposal has occurred.

"Construction and demolition debris" is defined in OAC Rule 3745-400-01(F) as (in pertinent part): ...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...

Notification of violations of Ohio laws and rules:

The owner of the Property is in violation of the following laws and rules:

1. **Ohio Revised Code (ORC) Section 3734.03:**
   No person shall dispose of solid wastes by open burning or open dumping, except as authorized by the director of environmental protection in rules adopted in accordance with division (V) of section 3734.01, section 3734.02, or sections 3734.70 to 3734.73 of the Revised Code and except for burying or burning the body of a dead animal as authorized by section 941.14 of the Revised Code. No person shall dispose of treated or untreated infectious wastes by open burning or open dumping.

2. **Ohio Administrative Code (OAC) Rule 3745-27-05(C):**
   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.

"Open dumping" as defined in OAC Rule 3745-27-01(O)(4) as (in pertinent part):

(a) The deposition of solid wastes, other than scrap tires, into waters of the state, and also means the final deposition of solid wastes on or into the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code, and Chapters 3745-27, 3745-29, 3745-30, and 3745-37 of the Administrative Code.

(b) The deposition of solid wastes that consist of scrap tires into waters of the state, and also means the final deposition of scrap tires on or into the ground at any place other than a scrap tire collection, storage, monofill, monocell, or recovery facility licensed under section 3734.81 of the Revised Code, or at a site or in a manner not specifically identified in division (C)(2), (C)(3), (C)(4), (C)(5), (C)(7), or (C)(10) of section 3734.85 of the Revised Code, or at any licensed solid waste facility if the deposition is not in accordance with Chapters 3745 27 and 3745-37 of the Administrative Code.

3. **ORC Section 3734.76(C)** which states in pertinent part:
   . . . no person shall establish a new, or modify an existing, scrap tire storage facility without first either registering with the director by submitting an application for a scrap tire storage facility registration certificate . . .

4. **OAC Rule 3745-27-61(B)** which states in pertinent part:
   An application for a registration certificate as required by section 3734.75, 3734.76, or 3734.78 of the Revised Code, shall be submitted to and approved by the director, before the establishment or modification of the scrap tire collection, class II scrap tire storage, or class II scrap tire recovery facility is begun...

5. **OAC Rule 3745-27-60(C):**
   Anyone storing scrap tires shall maintain mosquito control as follows:
   (1) One or more of the following shall be done to control mosquitoes:
   (a) Remove liquids from scrap tires within twenty-four hours of accepting the scrap tires.
   (b) Store scrap tires such that water does not accumulate in scrap tires or containers. Tires shall be kept free of water at all times.
   (c) Within twenty-four hours of accepting scrap tires containing liquid, arrange for the application of a pesticide or larvicide, which is registered for use as mosquito control by the Ohio department of agriculture.
   (2) Maintain mosquito control by keeping all tires dry or by continuing applications of a pesticide or larvicide to all scrap tires stored outdoors at no greater than thirty-day intervals or as recommended by the manufacturer or formulator.
   (3) Maintain mosquito control records at the premises indicating the name, type, amount used per tire, and EPA registration number of the pesticide or larvicide, the date and time of the application, and the name of the person who applied the pesticide or larvicide. The property owner or the owner or operator of the premises shall make the mosquito control records available for inspection by the director or the health commissioner during normal operating hours. The owner or operator shall retain copies of mosquito control records for a minimum period of three years.

6. **OAC Rule 3745-27-60(B)(7):**
   The following requirements apply to storage of scrap tires outside of portable containers, trucks, semi-trailers, a building or covered structure:
   (a) Individual scrap tire storage piles shall be no greater than two thousand five hundred square feet in basal area and the total number of scrap tires shall not exceed the amount specified in paragraph (A) of rule 3745-27-61 of the Administrative Code. Scrap tire storage piles shall include any area where scrap tires are stored in racks.

The two thousand five hundred square feet basal area shall apply to multiple racks and small scrap tire piles not separated from other racks, piles, or structures by a fire break at least fifty-six feet wide. The basal area of the scrap tire storage pile shall include the area of the tire piles, racks, and the area of any walkway or other open areas that do not meet the definition of a fire break as defined in rule 3745-27-01 of the Administrative Code.

(b) Scrap tire storage piles shall not exceed eight feet in height.

(c) Scrap tire storage piles of five hundred scrap tires or less shall be at least twenty-five feet away from all buildings and other scrap tire storage piles.

(d) Scrap tire storage piles of more than five hundred scrap tires including single or multiple racks containing a total of more than five hundred scrap tires shall be separated from other scrap tire storage piles and from buildings and structures by a fire break with a width equal to or greater than fifty-six feet in accordance with the fire break chart in appendix I to rule 3745-27-65 of the Administrative Code.

(e) 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.

7. **OAC Rule 3745-400-04(B):**
   No person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code.

"Illegal Disposal" as defined in OAC Rule 3745-400-01(S) as (in pertinent part):

> ...the disposal of construction and demolition debris at any place other than a construction and demolition debris disposal facility operated in accordance with Chapter 3714. of the Revised Code, and Chapters 3745-400 and 3745-37 of the Administrative Code a solid waste disposal facility operated in accordance with Chapter 3745-27 of the Administrative Code, and licensed in accordance with Chapter 3745-37 of the Administrative Code, or as otherwise authorized by this Chapter.

The owner of the Property needs to immediately take the necessary measures to return to compliance with Ohio's environmental laws. Please respond in writing within 14 days from the date of this letter. Your response shall include the following:

1. A detailed description of how the solid waste (including scrap tires) and construction and demolish debris was acquired and/or why they were disposed of at the Property.

2. Amount of solid waste (including scrap tires) and construction and demolition debris removed from the Property since the May 3, 2011 inspection.

3. Documents that verify proper disposal of the removed solid waste (including scrap tires) and construction and demolition debris.

4. A complete schedule for removing and properly disposing of the remaining solid waste (including scrap tires) and construction and demolition debris that is currently located on the Property.

Please submit this response and/or any other pertinent documentation to:

Ohio EPA – NWDO
Attn: Curtis DeLong
347 N. Dunbridge Road
Bowling Green, OH 43402

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 you return to compliance. If circumstances delay the abatement of violations, the owner/operator is requested to submit written correspondence of the steps that will be taken by date certain 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; Resources Conservation and Recovery Act; or Comprehensive Environmental Response, Compensation, and Liability Act for remedying conditions resulting from any release of contaminants to the environment.

This correspondence addressed specific observations only for the areas of the Property that were inspected. Nothing present in, nor absent from this correspondence is intended to mean that no additional violations existed on the Property at the time of inspection.

Please contact me at (419) 373-3033, if you have any questions regarding proper disposal of the above referenced material.

Sincerely,

Curtis DeLong, S.I.T.
Environmental Specialist II
Division of Materials and Waste Management

/llr

pc: Oscar Hernandez, Defiance County Health Department
File: DMWM-SW, Defiance County, Tires

ec: Jeremy Scoles, DMWM-NWDO