

CLR



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

Re: Case No. 13-41  
110 Cliff Street, Napoleon  
Henry County  
**Notice of Violation**

September 11, 2013

Mr. Roberto Huesca  
110 Cliff Street  
Napoleon, Ohio 43545

Dear Mr. Huesca,

On September 4, 2013, I, representing the Ohio Environmental Protection Agency (Ohio EPA), Division of Materials and Waste Management (DMWM), conducted an inspection of a property located at 110 Cliff Street, Napoleon, Ohio in Henry County (Property). The Property is identified as Parcel Number: 41-009362.0600 according to the Henry County Auditor and you are identified as the owner of said parcel. Ms. Ella Huesca was present at the time of the inspection.

Ohio EPA, DMWM was called to the Property as a result of a complaint of illegal disposal of construction and demolition debris. This inspection was conducted to determine compliance with Ohio's Solid Waste Rules and Laws, Ohio Administrative Code (OAC) 3745 and Ohio Revised Code (ORC) 3734.

**Description of Ohio EPA's observations of the Property:**

Weather at the time of the inspection was clear and cool.

Upon arrival at the Property construction and demolition debris in the form of shingles and dimensional lumber was observed as well as clean hard fill (mostly bricks and concrete) and yard waste (large pieces of woody debris). The construction and demolition debris and yard waste were commingled within the clean hard fill. The fill area and area of comingled wastes was approximately 150 X 200 feet and adjacent to a small tributary of the Maumee River.

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

For the purpose of this definition, "materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure," are those structural and functional materials comprising the structure and surrounding site improvements, such as brick, concrete and other masonry materials, stone, glass, wall coverings, plaster, drywall, framing and finishing lumber, roofing materials, plumbing fixtures, heating equipment, electrical wiring and components containing no hazardous fluids or refrigerants, insulation, wall-to-wall carpeting, asphaltic substances, metals incidental to any of the above, and weathered railroad ties and utility poles.

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"Clean Hard Fill" as defined in OAC Rule 3745-400-01(E):

"Clean hard fill" means construction and demolition debris which consists only of reinforced or nonreinforced concrete, asphalt concrete, brick, block, tile, and/or stone which can be reutilized as construction material. Brick in clean hard fill includes but is not limited to refractory brick and mortar. Clean hard fill does not include materials contaminated with hazardous wastes, solid wastes, or infectious wastes.

**Notification of violations of Ohio laws and rules:**

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

**1. OAC 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):

"Illegal disposal" means 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.

**2. 3745-400-05(C):**

The person responsible for causing clean hard fill to be used in legitimate fill operations for construction purposes or to bring the site up to a consistent grade, on a site other than the site of generation, shall provide a written "Notice of Intent to Fill" to each licensing authority where the clean hard fill is to be placed. The Notice of Intent to Fill shall state the nature of the fill material, the site(s) to be filled, when filling will begin and end, and the telephone number of the notifier. The notification shall be received by each local licensing authority with sites to be filled, at least seven days prior to filling as required by division (F) of section 3714.13 of the Revised Code. The notifier shall provide a new Notice of Intent to Fill if there are any changes in the information required by this rule for notification.

**Recommendations and other comments:**

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 should include the steps that will be or have been taken to return to compliance, a notice of intent to fill, and all receipts showing that the construction and demolition debris was properly disposed. Please submit this response and/or any other pertinent documentation to:

Ohio EPA – NWDO  
Attn: Curtis DeLong  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

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A template notice of intent to fill form has been included with this letter for you to complete and remit to Ohio EPA for the existing clean hard fill placement at the Site. In addition, the filling in of the area adjacent to the tributary may have taken place without the proper permits from the Division of Surface Water (DSW) and/or U.S. Army Corps of Engineers. It is recommended that Mr. Paul Wetzel or Mr. Brian Swartz of the U.S. Army Corps of Engineers be contacted at (419) 898-3491, and also contact Ms. Heather Allamon of Ohio EPA DSW at (419) 373-3024, to discuss your filling operations.

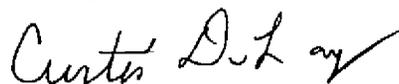
Please be advised that violations cited above will continue until the violations have been properly abated. Failure to comply with Chapter 3734 of the Ohio Revised Code and rules promulgated thereunder may result in a civil penalty of up to \$10,000 per day for each violation. It is imperative that you 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.

Compliance with the requirements outlined in this letter, or the solid and infectious waste provisions in Ohio Revised Code (ORC) Chapter 3734 and the rules promulgated thereunder, does not relieve the owner/operator of his/her obligation to comply with other State and Federal laws and regulations.

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 at the Property at the time of inspection.

Please contact me at (419) 373-3033 if you have any questions concerning this inspection.

Sincerely,



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

/cg

pc: File: DMWM-SW, Henry County, Dump Sites  
Paul Wetzel, U.S. Army Corps of Engineers, Buffalo District  
Brian Swartz, U.S. Army Corps of Engineers, Buffalo District

ec: Jeremy Scoles, DMWM-NWDO  
Heather Allamon, DSW-NWDO