



**Environmental
Protection Agency**

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

EPA ID # OHD 004184768

September 19, 2011

Mr. Jim Krimmel
Zaclon LLC
2981 Independence Road
Cleveland, Ohio 44125

Dear Mr. Krimmel,

On August 24, 2011, I completed a financial record review of documentation for Zaclon LLC/Independence Land Development Company (Zaclon). On October 8, 2009, and May 28, 2010, Zaclon was issued Director's Final Findings and Orders (Orders) as a result of illegal storage of hazardous waste at the Zaclon facility in Cleveland. The Orders required closure of five areas at the facility; the SASH pile, East Pad, Building 39, the area behind Building 25 and Building 13. The May, 2010 Orders modified the closure plan submittal date set forth in the October, 2009 Orders. The Orders also required Zaclon to submit a closure cost estimate and documentation demonstrating the establishment of financial assurance and liability coverage. I evaluated the facility for compliance with the requirements set forth in Ohio Administrative Code (OAC) rules 3745-55-42 to 3745-55-47, and the Orders.

To demonstrate financial assurance for closure, Zaclon uses standby Letter of Credit No. CTCS-911785 issued by JPMorganChase in the amount of \$125,000 and dated Mar 28, 2011. Ohio EPA has also received Amendment No.:1 dated Mar 30, 2011, and Amendment No.:2 dated Jul 20, 2011. Closure cost estimates were provided for the Zaclon facility by Hull & Associates, Inc. in a letter to Zaclon dated March 17, 2011. Based on a review of this information, the following violations were determined:

1. **OAC rule 3745-55-47 Liability Requirements.** Zaclon has failed to establish liability coverage, in violation of this rule and the October 8, 2009, and May 28, 2010, Orders. In order to attain compliance, Zaclon must submit documentation to Ohio EPA demonstrating it has obtained liability coverage for the facility.
2. **OAC rule 3745-55-43(D)(1) Closure letter of credit.** Letter of Credit No. CTCS-911785 dated Mar 28, 2011, is a copy. In order to attain compliance, Zaclon must have the original letter of credit delivered to the director by certified mail. Ms. Giffels of Zaclon has assisted in addressing this matter, however, Ohio EPA has no record of receiving the original letter and therefore is unable to process the paperwork received from Zaclon on July 7, 2011 to have the letter re-issued.
3. **OAC rule 3745-55-43(D)(2) Closure letter of credit.** The wording of the letter of credit must be identical to the wording in OAC rule 3745-55-51(D). Letter of Credit No. CTCS-911785 dated Mar 28, 2011, does not have the identical wording contained in the rule.
4. On July 27, 2011, Ohio EPA received Amendment No.:2 to the Letter of Credit, which corrected some of the wording. However, there is still an error in the fifth paragraph due to the missing language referencing the standby trust. This should be corrected once

the standby trust is established. Future amendments must **not** include the paragraph for the beneficiary to indicate acceptance or rejection by signing the Amendment. Ohio EPA will communicate acceptance/rejection through a Notice of Compliance or Notice of Violation letter.

5. **OAC rule 3745-55-43(D)(3) Closure letter of credit. Standby trust fund.** An owner or operator who uses a letter of credit to satisfy the requirements of this rule must also establish a standby trust fund. Ohio EPA has not received any information that indicates Zaclon has established the standby trust fund. In order to attain compliance, Zaclon must submit documentation that a standby trust fund has been established, as described in OAC rule 3745-55-43(D)(3)(a).
6. **ORC §3734.11(A) Prohibitions.** 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. Zaclon has failed to comply with the October 8, 2009, and May 28, 2010, Orders.

General Concern: Many of the closure activities at the facility were subcontracted by Hull, to Enviroserve. In the cost estimate provided by Enviroserve (March 10, 2011), the "Roll-off Service" indicates a "Disposal estimate of 5 boxes." Based on closure activities completed to date at Building 39, Building 25 and Building 13, this estimate may need to be increased (see OAC rule 3745-55-42(A) and 3745-55-12(B)(4)) because of the amount of waste that has been generated, but this cost may be offset by the certification of closure for Building 39 and Building 25. Also, the approved closure plan calls for testing of the waste/contaminated soils that are removed from the areas undergoing closure, however, the assumption has been made that the waste being generated during these activities is hazardous waste and is being managed as such. The cost estimate should specify that the fees are for disposal of hazardous wastes.

Please respond within 14 days of the receipt of this letter, with your plan for attaining compliance with the requirements of the Orders and rules. Feel free to contact me at (614) 644-3174 or kelly.smith@epa.state.oh.us if you have any questions.

Sincerely,



Kelly Smith
Compliance Assurance Section
Division of Materials and Waste Management

KSG/jms

ec: Karen Nesbit, DMWM, NEDO
Mitch Mathews, DMWM
Todd Anderson, Legal
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