



**Environmental  
Protection Agency**

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

June 21, 2011

Mr. Gerald Stewart  
Austin Powder Company  
P.O. Box 317  
McArthur, OH 45651

**RE: Austin Powder Company – McArthur, OH  
Financial Record Review – Notice of Violation  
OHD 004 293 775**

Dear Ms. Smith:

On June 20, 2011, I conducted a financial record review of documentation on file for the Austin Powder Company (Austin); Red Diamond Plant manufacturing facility located at 430 Powder Plant Road, Mogadore, OH. I evaluated the facility for compliance with the closure financial assurance, closure cost estimates, and liability requirements as set forth in Ohio Administrative Code (OAC) rules 3745-55-42, 3745-55-43 and 3745-55-47 and permit conditions B.36, B.37, and B.38.

To demonstrate financial assurance for closure care, an Irrevocable Standby Letter of Credit (LOC) and a Standby Trust Agreement are used. The LOC, number S91/90356, was issued by KeyBank National Association effective November 15, 1988. The current amount of the LOC, amendment sequence number 28 dated June 1, 2011, is \$334,000.00. The LOC is accompanied as required by a standby trust agreement (SBTA) which was first established on January 23, 1989, through Society National Bank.

To demonstrate third party liability coverage, a Hazardous Waste Facility Certificate of Liability Insurance, with Lancer Insurance Company (Lancer) was provided on September 18, 2008. March 25, 2009. The Lancer policy, No. GL803261, satisfies the third-party liability requirements for sudden accidental occurrences. The limits of liability are \$2,000,000 per occurrence and \$2,000,000 in the aggregate, exclusive of legal defense costs. Austin also included an Acord Certificate of Liability Insurance verifying Liability Coverage from June 1, 2011 to June 1, 2012.

I found the following violation of Ohio's hazardous waste laws. In order to correct these violations you must do the following and send me the required information **within 30 days** of your receipt of this letter:

1. **OAC Rule 3745-55-42(B); Must Adjust Estimate for Inflation:** During the active life of the facility, the owner or operator must adjust the closure cost estimate for

inflation within sixty days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 3745-55-43 of the Administrative Code.

Austin has failed to submit an adjusted closure cost estimate for the Red Diamond Plant manufacturing facility. The last closure cost estimate was submitted as part of an October 20, 2009 Class 1 permit modification for a total of \$325,167.00. The anniversary date of the establishment of the financial instrument, LOC number S91/90356, is November 15, 1988. The closure cost estimate should have been adjusted for inflation within sixty days prior to November 15, 2010.

- Austin must immediately submit an adjusted closure cost estimate. Since we are in the permit renewal process, Austin should present an updated detailed written estimate, in current dollars, of the cost of closing the facility in accordance with OAC 3745-55-42(A). The estimate must equal the final closure costs at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive. The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. The cost estimate is currently listed with lump sum values and must be revised to include more detailed unit costs for each closure activity required.

#### General Concern

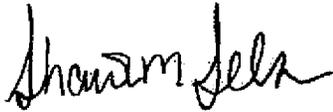
Please be aware that this Financial Records Review covers the Financial Assurance documentation you have provided Ohio EPA's Division of Materials and Waste Management (DMWM) Financial Assurance and Remediation Unit and your current Hazardous Waste Installation and Operation Permit. While the Part B renewal application you submitted to Ohio EPA on June 7, 2011 was also considered in this review, all comments associated with the renewal application will come separately after Ohio EPA's complete review.

Mr. Gerald Stewart  
Austin Powder Company, McArthur, OH  
Page 3 of 3

---

If you have any questions, please feel free to call me at (614) 644-2933 or email me at shawn.sellers@epa.ohio.gov.

Sincerely,



Shawn M. Sellers, P.E.  
Engineering, Remediation and Authorizations Section  
Division of Materials and Waste Management

SS/jm

ec: Vicky German, DMWM, SEDO  
Dustin Tschudy, ERAS, DMWM

**Notice:**

Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with applicable regulations.