



**Environmental
Protection Agency**

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

*Copy for -
Shawn*

May 13, 2011

Mr. John W. Hannah
Veolia ES Technical Solutions, LLC
P.O. Box 453
West Carrollton, Ohio 45449

**RE: Veolia ES Technical Solutions, LLC. (OHD093945293)
Financial Record Review – Notice of Violation**

Dear Mr. Hannah:

On May 12, 2011, I conducted a financial record review of the Veolia ES Technical Solutions, LLC (Veolia) facility, formerly Onyx Environmental Services, LLC. I evaluated the facility for compliance with the closure cost estimates, closure care financial assurance, and liability requirements as set forth in Ohio Administrative Code (OAC) rules 3745-55-42, 3745-55-43, and 3745-55-47. I also evaluated the facility for compliance with hazardous waste permit conditions B.36, B.37, and B.38.

On October 25, 2010, Ohio EPA received a class 1 permit modification request (pmr). The pmr (tracking number – 101025-1-1) updates the certificate of Liability Insurance located in Appendix I.4-1 of the part B application.

To demonstrate financial assurance for closure care, a Surety Bond and Standby Trust Agreement are used. A Surety Bond, number 300315, was issued by Ohio Indemnity Company on September 1, 2006. The current amount of the Bond is \$2,401,751.56, effective October 6, 2009. A standby trust agreement was entered into January 31, 2000, by and between Onyx Environmental Services, LLC (currently VES) and Bank One Trust Company, N.A. "Amendment No. 1 to Stand-by Trust Agreement" was provided effective July 1, 2006 to change the Grantor's name to Veolia and the Trustee's name to J.P. Morgan Trust, National Association.

To demonstrate third party liability coverage, a Hazardous Waste Facility Certificate of Liability Insurance, with Lexington Insurance Company (LIC) was provided, effective September 30, 2010. The LIC policy, No. PLS 2032087, satisfies the third-party liability requirements for sudden accidental occurrences. The limits of liability are \$1,000,000 per occurrence and \$2,000,000 in the aggregate, exclusive of legal defense costs.

I found the following violations 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.

Veolia has failed to submit an adjusted closure cost estimate. The last submitted detailed closure cost estimate, located in Appendix I.2-1 of the Part B Application, was adjusted for inflation on October 21, 2009 with a total closure cost of \$2,401,751.56. Since the anniversary date of the establishment of your financial instrument is September 1, 2006, you were required to adjust the closure cost estimate for inflation within sixty days prior to September 1, 2010.

- Veolia must immediately submit an adjusted closure cost estimate. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent "Implicit Price Deflator for Gross National Product" published by the U.S. department of commerce in its "Survey of Current Business," for 2010.
2. **OAC Rule 3745-55-43, Financial Assurance for Facility Closure:** An owner or operator of each facility must establish financial assurance for closure of the facility

On October 6, 2009, Veolia last provided an 'Increase Rider to Surety Bond', increasing the bond amount to \$2,401,751.56. Since an updated detailed closure cost estimate was not submitted prior to the September 1, 2010 anniversary date, Veolia has not demonstrated it has adequately established financial assurance for closure of the facility. In accordance with OAC Rule 3745-55-43(C)(7), whenever the current closure cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator must, within sixty days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance to cover the increase.

- Veolia must immediately update the Surety bond guaranteeing performance of closure in accordance with OAC 3745-55-43(C) or provide an alternate financial assurance mechanism.

General Concern

As noted during my last financial records review on December 9, 2009, I noticed that the closure cost estimate contained a few errors and must be revised during your next submittal in order to avoid future discrepancies. These discrepancies include:

- Removal of hazardous waste fuel tanks inventory for the 14 tanks was calculated for 187,000 gallons instead of the actual 167,000 gallon capacity.
- Removal of incineration materials from tanks was calculated for 46,000 gallons instead of the actual 38,000 gallon capacity.
- The handling of decontamination wash/rinse water for the tanks and associated equipment appears to be calculated using 400,100 gallons instead of the actual 418,100 gallon capacity.
- The decontamination sampling and analysis of containment areas using 1 analysis per 5000 gallons of water/rinseate at \$1,000.00 per sample would cost \$42,400.00 instead of the \$10,600.00 listed.

Also, in accordance with Rule OAC 3745-50-51(D)(1)(a)(i) the permittee must notify the director of a class 1 modification by certified mail or other means that establish proof of delivery within seven days after the change is implemented. Appendix to Rule OAC 3745-50-51 C.8.a lists changes to financial assurance mechanisms due to annual inflationary adjustments as class 1 modifications. Cost estimate changes due to annual inflationary adjustments are generally regarded as class 1 modifications as well. Please submit the appropriate modifications to provide a revised detailed closure cost estimate located in Appendix I.2-1 and an updated surety bond located in Appendix I.3-1 of the part B application.

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
Engineering, Remediation, and Authorizations Section
Division of Materials and Waste Management

ec: Tom Koch, DMWM, SWDO
Dan Lukovic, ERAS, DMWM, CO

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.