



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

MEMORANDUM

To: File
From: *JW*
Ike Wilder, DHWM, CAS, EU
Subject: **Financial Record Review McCabe Engineering Company, Inc.,
OHD980700942, Dayton**
Date: May 25, 2010

On May 21, 2010, I completed a review of the financial assurance documentation file for the 636 North Irwin Street facility referenced above. I evaluated the facility for compliance with financial assurance and liability requirements set forth in the Ohio Administrative Code (OAC) rules 3745-55-42, 3745-55-43 and 3745-55-47.

In addition I evaluated the facility for compliance with the closure requirements set forth in the October 22, 1998 Consent Order (Montgomery County Court of Common Pleas, Case No. 08-3449) between the State of Ohio, ex rel. Betty Montgomery, Attorney General of Ohio and Republic Environmental Services (Ohio), Inc., Republic Environmental Systems, Inc., and BRAC, Inc.

On February 13, 2009, Montgomery County Court of Common Pleas Judge Mary Weisman ordered that McCabe et al. submit a closure cost estimate within 60 days of the court order. Ohio EPA has not yet received an acceptable amended closure plan. Therefore we do not have a current closure cost estimate. Judge Weisman ruled that the general liability coverage supplied by Mr. McCabe may be adequate.

On October 9, 2009, Montgomery County Common Pleas Court Judge Mary Wiseman handed down a penalty judgment for contempt of the 1998 court ruling. The former operators as well as current property owner of the facility have been ordered to finish determining the extent of contamination which remains at the site and address any impacted soil and groundwater.

To demonstrate compliance with financial assurance and liability rules, the 636 North Irwin Street facility uses a trust fund entered into with Fifth-Third Bank on December 12, 1986. On March 31, 2010, the trust fund was valued at \$237,044.19. The closure cost appears to have last been updated in October of 1998. Currently the facility does not

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have liability coverage that meets the requirements of OAC 3745-55-47. McCabe Corporation has a general liability policy with Westchester Surplus Lines Insurance Company. The policy number is G24641764001. The policy has a \$1,000,000 per occurrence and a \$2,000,000 aggregate. The policy expires on 3/11/2011,

Upon review of the financial assurance documentation, the following violations were found:

- Failure to have a current closure cost estimate in violation of OAC rule 3745-66-42;
- Failure to maintain adequate financial assurance for closure in violation of OAC rule 3745-66-43;
- Failure to maintain liability coverage in violation of OAC rule 3745-66-47; and
- Paragraph 8 of the Consent Order requiring Defendants to maintain compliance with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in R. C. Chapter 3734 and the Ohio Adm. Code Chapters 3745-50 through 3745-69. This provision includes compliance with the above noted financial assurance regulations.

By letters dated March 7, 2001, April 21, 2003 and May 15, 2007, Mr. McCabe was notified of the above violations. These violations remain outstanding.

ec. Brian Gitzinger, DHWM, SEDO
 Kristina Durnell, DHWM, RISS
 Brian Ball, AGO