

*Copy - Shawn*



**Environmental  
Protection Agency**

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

May 19, 2011

Ms. Susan L. Smith  
Owens-Illinois, Inc. Plaza 3  
One Michael Owens Way  
Perrysburg, OH 43551

**RE: Universal Materials, Inc., Mogadore, OH (OHD 980 792 600)  
Financial Record Review – Notice of Violation**

Dear Ms. Smith:

On May 18, 2011, I conducted a financial record review of documentation on file for the Universal Materials, Inc. (Universal), Mogadore, OH facility. 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 in accordance with the Director's Final Findings and Orders entered into between Ohio EPA, Universal, and Owens-Illinois, Inc. (O-I) on November 17, 2008.

To demonstrate financial assurance for closure care, an Irrevocable Standby Letter of Credit (LOC) and a Standby Trust Agreement are used. The LOC, number DBS-18165, was issued by Deutsche Bank AG effective February 12, 2009. The current amount of the LOC is \$408,000.00. A standby trust agreement was entered into February 5, 2009 by and between Owens-Brockway Glass Container, Inc. on behalf of Owens-Illinois, Inc. and its former subsidiary Universal, the "Grantor," and Deutsche Bank AG, a national bank, the "Trustee."

To demonstrate third party liability coverage, a Hazardous Waste Facility Certificate of Liability Insurance, with American International Specialty Lines Insurance Company (AISLIC) was provided, effective March 25, 2009. AISLIC has since changed their name to Chartis Specialty Insurance Company (CSIC). The CSIC policy, No. PLS 16854127, 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. According to the insurance broker for this policy, Hylant Group, the policy is currently effective March 25, 2010 through March 25, 2011.

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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.

O-I has failed to submit an adjusted closure cost estimate for the Universal facility. The last closure cost estimate was submitted as part of the revised closure plan for the facility on September 18, 2009. This closure plan revision was approved by Ohio EPA on January 15, 2010 with a total closure cost of \$454,000.00. The anniversary date of the establishment of the financial instrument, LOC number DBS-18165, is February 12, 2009. The closure cost estimate should have been adjusted for inflation within sixty days prior to February 12, 2011.

- O-I 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." The annual inflation factor in the December 2010 publication was calculated at 0.9%.

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 February 12, 2009, O-I provided LOC number DBS-18165 in the amount of \$408,000.00. On January 15, 2010, Ohio EPA approved a revised closure plan increasing the closure cost estimate to \$454,000.00. Pursuant to OAC Rule 3745-55-43(D)(7), whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator must, within sixty days of the increase, cause the amount of the credit 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. In this instance, LOC number DBS-18165 should have been increased to a face value of \$454,000.00 or other financial assurance should have been provided to cover the increase by March 15, 2010. By failing to increase the credit, O-I failed to provide adequate financial assurance for facility closure.

Also, as described in the first violation of rule OAC Rule 3745-55-42(B) cited above, the closure cost estimate should have been increased for inflation or by recalculating the maximum costs of closure in current dollars within sixty days prior to February 12, 2011. In accordance with OAC Rule 3745-55-43(D)(7), LOC number

DBS-18165 should have been increased again, no later than sixty days after the inflation adjusted closure cost estimate. By failing to adjust the closure cost estimate for inflation, O-I failed to demonstrate it had provided adequate financial assurance for facility closure.

- O-I must immediately submit an amendment to LOC number DBS-18165 covering both the increase to the revised closure cost estimate approved January 12, 2010 and the inflation adjusted closure cost estimate which was due by February 12, 2011. The submittal should be in accordance with OAC 3745-55-43(D) which matches the wording specified in paragraph (D) of OAC 3745-55-51 or provide an alternate financial assurance mechanism for both increases.

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

Sincerely,



Shawn M. Sellers  
Engineering, Remediation and Authorizations Section  
Division of Hazardous Waste Management

ec: Ed D'Amato, DMWM, NEDO  
Dennis Garbig, Owens-Illinois, Inc.

**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.