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State of Ohio Environmental Protection Agency

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July 27, 2010

Mr. W.J. Kandel
Solvay Advanced Polymers L.L.C.
P.O. Box 446
17005 State Route 7
Marietta, Ohio 45750-0446

**RE: RCRA Permit Modification – Financial Assurance
Solvay Advanced Polymers, L.L.C. (OHD981529688)
Solvay America, Inc.**

Dear Mr. Kandel:

On May 3, 2010, Ohio EPA received financial assurance documentation for the Solvay Advanced Polymers, L.L.C. (Solvay) Marietta Plant (Facility). On June 30, 2010, Ohio EPA's Division of Hazardous Waste Management (DHWM) completed reviewing these documents, which consisted of;

- a request for a RCRA Class 1 permit modification to the Solvay hazardous waste facility permit;
- updated financial assurance documents;
- a letter from the chief financial officer of Solvay America, Inc.; and
- guarantees for closure/post-closure care and liability coverage.

DHWM evaluated this documentation for compliance with closure/post-closure cost estimates, closure/post-closure financial assurance requirements and liability coverage as set forth in Ohio Administrative Code (OAC) rules 3745-55-42 through 3745-55-47 and Permit Conditions B.36., B.37. and B.38. Ohio EPA DHWM has determined this is a Class 1 modification under B.1. of the Appendix of OAC rule 3745-50-51. For the Facility, Solvay maintains financial assurance for closure and liability coverage for its hazardous waste Container Storage Area and the Emergency Basin, and financial assurance for post closure of the Equalization Basin (Closure certified in 1996).

In a letter to Ohio EPA dated July 2, 2010, you requested that this RCRA Class 1 permit modification be withdrawn due to numerous discussions DHWM conducted with several staff members at Solvay America, Inc. regarding deficiencies in the financial assurance submittals.

To demonstrate compliance with financial assurance requirements for closure/post-closure care and third-party liability coverage, Solvay uses a financial test and a corporate guarantee mechanism. Solvay America, Inc. provided a guarantee on behalf

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director



of Solvay for the Facility. I have worked with Ginny Hubert from Solvay America, Inc.'s Houston office and she has been very responsive to Ohio EPA DHWM's questions and concerns.

Upon review of this financial assurance documentation DHWM noted the following violations:

- ✕ 1. OAC rule 3745-55-42(A), **Cost Estimate for facility closure:** The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in rules 3745-55-11 to 3745-55-15 of the Administrative Code and applicable closure requirements in rules 3745-55-78, 3745-55-97, 3745-56-28, 3745-56-58, 3745-56-80, 3745-57-10, 3745-57-51, 3745-57-91 to 3745-57-93, and 3745-205-102 of the Administrative Code.

As noted previously, Solvay continues to omit a contingency cost as a significant part of the closure and post closure cost estimates. Cost contingencies are standard to engineering projects and are amounts/percentages added to the cost estimate allowing for unknown and/or unplanned for events. The note section in OAC rule 3745-55-42 describes the meaning of "detailed closure cost estimate" and gives a listing of specific costs **including but not limited to each major phase of closure activity**. The US Environmental Protection Agency (EPA) has published specific cost estimate guidance, including *Guidance Manual: Cost Estimates For Closure and Post-Closure Plans, Volume III – Unit Costs, November 1986*. This guidance includes contingency cost as a cost estimate activity.

Solvay needs to add a cost contingency to its cost estimates. Our experience with other facilities is that closure and post closure cost contingencies are often quoted in the 15% to 20% ranges based on project specifics.

- ✕ 2. OAC rule 3745-55-42(B)(2), **Cost Estimate for facility closure:** 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 rule 3745-55-43 of the Administrative Code. This adjustment is made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

Solvay has failed to use the latest inflation factor of 1.18% to adjust the closure cost estimate. The 2009 closure cost estimate was \$4,565,625 and the 2010 estimate is \$4,593,018. If properly adjusted, the 2010 estimate should be at least \$4,646,892. This does not take into account the ADDITIONAL increase that needs to be made for contingency costs cited in the violation set forth in item

number 1 above. The cost estimates need to reflect total costs in current dollars of completing closure and post closure work at the Facility.

3. OAC rule 3745-55-43(F)(1)(b)(i), Financial Assurance for facility closure. Financial test and guarantee: An owner or operator of each facility must establish financial assurance for closure of the facility. The owner or operator must have a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by "Standard and Poor's."

Solvay has Solvay America, Inc. as its guarantor and uses the financial position of Solvay America, Inc. to meet the requirements in Alternative II of the financial test. However, as part of the test, Solvay America, Inc. uses the bond rating of another entity, Solvay S.A., which is not allowed under the RCRA financial assurance regulations. Solvay must use the bond rating of the guarantor or use a different mechanism for financial assurance.

4. OAC rule 3745-55-43(F)(3)(a), Financial Assurance for facility closure. Financial test and guarantee. To demonstrate that he meets this test, the owner or operator must submit the following items to the director: A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statement for the latest completed fiscal year.

Solvay failed to submit a copy of the independent certified public accountant's report. A copy of this report must be submitted.

5. OAC rule 3745-55-43(F)(3)(c), Financial Assurance for facility closure. Financial test and guarantee. To demonstrate that he meets this test, the owner or operator must submit the following items to the director: A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited year-end financial statements for the latest fiscal year with the amounts in such financial statements.

The special auditor's report was deficient. It validated tangible net worth (number 7). Under Alternative II of the financial test in the Letter from the Chief Financial Officer, however, total assets in the U.S., i.e. numbers 8. and 11., of the financial test were not addressed in the report. The special auditor's report must be revised to address Solvay's U.S. holdings.

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6. OAC rule 3745-55-43(F)(10), Financial Assurance for facility closure. Financial test and guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee... The wording of the guarantee must be identical to the wording specified in paragraph (H) of rule 3745-55-51 of the Administrative Code.

The wording of the Guarantee for Closure or Post-Closure is not identical to the wording specified in paragraph (H)(1) of rule 3745-55-51 of the Administrative Code. Specifically, in item Number 4. of the Guarantee, the words "or interim standards" must be removed because Solvay Advanced Polymers has a permit. In addition, the Administrative Code Chapter citations in item Numbers 4. and 8. of the Guarantee should be "3745-256" instead of "3745-248."

7. OAC rule 3745-55-44(A) Cost estimate for post-closure care. The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under rules 3745-56-28 and 3745-56-58 of the Administrative Code to prepare a contingent closure and post-closure plan, must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility... [Note: As used in this rule, "detailed post-closure cost estimate means a listing of the specific costs associated with each major phase of facility post-closure activity for each hazardous waste management unit including but not limited to: ground water monitoring; maintenance of final cap and cover; erosion and wind dispersal control; and leachate collection and disposal activities.]

The "Estimated Costs for Post-Closure of Equalization Basin Solvay Advanced Polymers, LLC, Marietta, Ohio; 16 years," submitted with the May 3, 2010 financial assurance documentation does not provide sufficient detail to meet the regulatory requirements. This includes but is not limited to specific maintenance activities for the cover and disposal costs for the waste water removed by the vacuum dewatering system. In addition, the current estimate has an estimated cost of \$2,214 over 16 years, for an average cost per year of \$138 per year. Given current construction costs and personnel wages, it does not seem feasible to inspect and maintain the closed Equalization Basin with this level of funding. The post-closure cost estimate should be updated to include more detail and the dollar amount should be increased.

8. OAC rule 3745-55-44(B) Cost estimate for post-closure care. During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation... by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

The post-closure cost estimate of \$1,074,727 was decreased by an amount greater than the annual inflation factor and reduction in number of years remaining for post closure. Based on the post-closure cost estimate of \$1,296,305 given for 2009, the 2010 post-closure cost estimate should be at least \$1,234,448. Please provide justification for the decrease in the post-closure cost estimate.

- ✓ 9. **OAC rule 3745-55-47(G)(1) Guarantee for liability coverage...The wording of the guarantee must be identical to the wording specified in paragraph (H)(2) of rule 3745-55-51 of the Administrative Code.**

The wording of the Guarantee for Liability Coverage is not identical to the wording specified in paragraph (H)(2) of rule 3745-55-51 of the Administrative Code. Specifically, the language in the first paragraph of the Guarantee and in paragraph 1. of the Guarantee, under "Recitals."

- h0. **OAC rule 3745-55-47(G)(1) Guarantee for liability coverage... The guarantor must meet the requirements for owners or operators in paragraph (F)(1) to (F)(6) of this rule.**

OAC rule 3745-55-47(F)(3)(a)... if an owner or operator is using the Financial Test to demonstrate both assurance for closure or post-closure care, as specified by paragraph (F) of rule 3745-55-43 and paragraph (F) of rule 3745-55-45 or paragraph (E) of rule 3745-66-43 and paragraph (E) of rule 3745-66-45 of the Administrative code, and liability coverage, he must submit the letter specified in paragraph (G) of rule 3745-55-51 of the administrative code to cover both forms of financial responsibility...

The letter from the Chief Financial Officer (CFO) required by this rule does not contain the identical wording specified in paragraph (G) of rule 3745-55-51. Specifically, the following items need to be corrected:

- a. After the title "LETTER FROM CHIEF FINANCIAL OFFICER" insert the words "(to demonstrate both liability coverage and assurance of closure or post-closure care)";
- b. Insert the Address for the Director, Ohio Environmental Protection Agency;
- c. Remove the words "Vice President and" in paragraph one;
- d. Add the word "or" after the word "owner" in paragraph two;
- e. Remove the words "or guarantor" from paragraph two;
- f. Insert the words "and receiving the following value in consideration of this guarantee;" and state the value Solvay Advanced Polymers is giving Solvay America for providing the guarantee;

- g. In Number 1. of the CFO letter, remove the comma and insert the word "or" between the words "owns" and "operates";
 - h. In Number 1. of the CFO letter, remove the words "or guarantees";
 - i. In Number 2. of the CFO letter, remove the comma and insert the word "or" between the words "owned" and "operated";
 - j. In Number 2. Of the letter, remove the words "or guaranteed" after the word "operated".
 - k. At the end of item Number 3. In the CFO Letter, it indicates "(see Attachment)" however, there was no attachment provided. If Solvay America was providing financial assurance for other facilities in addition to the Solvay Advanced Polymers facility, these facilities would be listed in this Attachment. If there are no additional facilities, remove "(See Attachment)" and insert the word "(None)";
 - l. In Number 4. of the CFO letter, remove the comma and insert the word "or" between the words "owns" and "operates";
 - m. In Number 4. of the CFO letter, remove the words "or guarantees";
 - n. At the end of item Number 4. in the CFO letter, it indicates "(see Attachment)" however, there was no attachment provided. If Solvay America was providing financial assurance for other facilities using some other mechanism besides the financial test, those facilities would be listed in this Attachment. If there are no additional facilities, remove "(See Attachment)" and insert the word "(None)";
 - o. Insert the title "Part B. Closure or Post-Closure Care and Liability Coverage" above the title "ALTERNATIVE II" in the CFO letter;
 - p. Item Number 4. of the list under "ALTERNATIVE II" must be the bond rating of the guarantor. Solvay S.A. is not the company providing the guarantee; and,
 - q. Item Numbers 8. and 11. in the CFO letter should have an asterisk (see Item 7. in the CFO letter) indicating these items have been derived from Solvay America's independently audited, year-end financial statements (see above violation Number 5. in this Notice of Violation letter).
11. I had previously informed Ms. Hubert and Mr. Neuberger that **OAC rule 3745-55-47(G)(2)** requires that in the case of a corporation incorporated in a state other than Ohio, a guarantee may be used to satisfy the requirements of the rule only if the attorney general or insurance commissioners of that state have submitted a written statement to the Director of Ohio EPA that the guarantee is a legally valid and enforceable option in that state. There is no record in Ohio EPA files that the Delaware attorney general or insurance commissioner has submitted this information on behalf of Solvay America. Should Solvay have such a letter please submit it to my attention. Otherwise Solvay needs to submit documentation demonstrating it complies with this rule. No violation of this rule is being cited at this time.

12. With regard to **OAC rule 3745-55-43(F)(10) Financial Assurance for facility closure; financial test and guarantee, and 3745-55-47(G)(1) Guarantee for liability coverage**, if the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter [from Chief Financial Officer] must describe the value received in consideration of the guarantee. I reviewed a previous year's Consolidated Financial Statement (Years ended 2008 and 2007) contained in DHWM's file and noted that there is no specific reference to the Solvay Advanced Polymers, L.L.C. Marietta facility as a subsidiary of Solvay America, Inc. Please clarify the parent corporation for purposes of determining the applicability of providing a description of the value received in consideration of the guarantee. No violation of this rule is being cited at this time.

Based upon documentation and information available in Ohio EPA DHWM files, Solvay is coordinating RCRA Corrective Action for the Facility through a permit with U.S. EPA. Therefore, at this time, DHWM did not review Solvay's compliance with OAC rule 3745-54-101 related to financial assurance for RCRA Corrective Action.

Please send all future correspondence to the attention of: Manager, Regulatory and Information Services Section (RISS). If you have any questions regarding this letter or financial assurance regulations, please feel free to call me at (614) 644-3174.

Sincerely,



Kelly G. Smith
Compliance Assurance Section
Division of Hazardous Waste Management

cc: Jeremy Carroll, RISS, DHWM
Sarah Beal, ERAS, DHWM
Elizabeth Herron, DHWM, SEDO
Joe Bush, Senior Environmental Manager, Solvay Advanced Polymers, L.L.C.
Ms. Ginny Hubert, Solvay America, Inc., Houston

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.