

Interoffice Memo

To: Facility Financial Assurance File

FROM: ^{IBW} Isaac B. Wilder, CAS, DMWM

SUBJECT: Financial Assurance Record Review - Schott Metal Products (OHD 004192720)

DATE: September 30, 2011 - 047

On September 27, 2011, I completed a review of the financial assurance and liability coverage documentation on file for the Schott Metal Products' (SMP) facility located at 2225 Lee Drive, Akron, Ohio. I evaluated the facility for compliance with financial assurance and liability requirements set forth in the Ohio Administrative Code (OAC) rules 3745-66-42 through 3745-66-47.

I also evaluated the facility for compliance with the financial assurance requirements set forth in the Consent Order, State of Ohio v. Schott Metal Products, Inc. et. al., Case No. CV 89-08-2396, filed in Summit County, Ohio Court of Common Pleas. On July 7, 2005, SMP was referred to USEPA to pursue closure and corrective actions.

In 2006 EPA issued a Unilateral Administrative Order ("UAO") pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a) for sampling and monitoring activities at the Facility. USEPA is currently negotiating a consent decree seeking an injunction ordering the SMP to comply with the UAO and a civil penalty pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934(e).

To demonstrate compliance with the financial assurance requirements for closure for the facility referenced above, SMP uses a trust agreement as specified in OAC rule 3745-66-43. SMP established a trust fund with First Merit Bank on April 24, 1996. As of July 31, 2011, the trust fund was valued at \$211,421.19. Although USEPA is pursuing enforcement of this case Ohio EPA is the beneficiary of the trust fund used as the financial assurance mechanism for closure.

On August 11, 2011, Ohio EPA received an email from Steven Paffilas, Assistant Us Attorney in Cleveland. Mr. Paffilas asked how the USEPA could draw on the trust account to cover expenses associated with closure at the facility. It was suggested that the trust be amended to make the USEPA the beneficiary. Todd Anderson is currently working on this.

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

OAC rule 3745-66-42, Closure Cost Estimate

SMP has failed to submit an updated detailed closure cost estimate and therefore is in violation of OAC rule 3745-66-42. SMP's most recent closure cost estimate submitted to Ohio EPA is dated May 1, 1996. Ohio hazardous waste regulations require that closure cost estimates must be updated for inflation and submitted to Ohio EPA annually.

OAC rule 3745-66-47, Liability Coverage

SMP has failed to submit documentation demonstrating coverage for third party liability. In the **February 25, 2002, Consent Order**, SMP agreed to submit to Ohio EPA a closure cost estimate pursuant to OAC rules 3745-66-42 and 3745-66-44 (**Order No. 10**), and documentation of liability coverage pursuant to OAC rule 3745-66-47 (**Order No. 12**). To date, Ohio EPA has not received either of these items required to be submitted by the February 25, 2002, Consent Order.

It is important to note that the Stipulated Penalties in Sections 14 through 17 apply to the financial assurance requirements of the Consent Order.

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