



**Environmental
Protection Agency**

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

September 17, 2012

Ms. Amy Wood, Commissioner – Special Projects
Hoffman Road Landfill
3962 Hoffman Road
Toledo, Ohio 43611

**Re: Former XXKem Site, Toledo, Ohio
USEPA ID#: OHD980586804
Financial Record Review**

Dear Ms. Wood:

On September 12, 2012, I completed a review of the financial assurance documentation on file for the Former XXKem facility. I evaluated the facility for compliance with closure/post-closure/corrective action cost estimates, financial assurance for closure/post-closure/corrective action and liability coverage requirements. These requirements are set forth in the Ohio Administrative Code (OAC) rules 3745-55-42 through 3745-55-47 and 3745-54-101.

The most recent financial assurance documentation submitted for the XXKem facility includes the following:

- A closure cost estimate of \$748,250.00 date July 1, 2008.
- An alternative II financial test of \$2,498,250 for closure, post-closure and liability coverage submitted on November 4, 2008, this included \$748,250.00 for closure, \$750,000.00 for post-closure coverage and \$1,000,000.00 for liability coverage.
- A post-closure cost estimate of \$1,250,274 submitted by Hull & Associates on October 19, 2010 and revised June, 2012.
- An amended closure plan approval issued on August 30, 2012.

Based upon review of the documentation noted above, the City of Toledo is in violation of the following Ohio financial assurance requirements:

- **OAC 3745-66-42(A)** requires that an owner or operator of a hazardous waste facility shall have a detailed written estimate, in current dollars, of the cost of closing the facility and that a copy of the facility's current, detailed closure cost estimate shall be submitted annually, or within sixty days after a change in the amount of the current closure cost estimate, to the director of the Ohio EPA. Please submit an updated closure cost for the amended closure plan approved on August 30, 2012;

- **OAC 3745-55-43(F)(5) and (45(F)(5)):** The alternative II financial test noted above is not current and needs to be updated to reflect the changes in the cost estimate and to correct errors in the submittal. Financial tests must be submitted annually within 90 days of the close of your fiscal year; and
- **OAC 3745-55-47(A):** An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by non-sudden accidental occurrences arising from operations of the facility or group of facilities. The \$1,000,000.00 that Toledo has included in their 2008 financial test is not sufficient liability coverage for this site.

Areas of Concern:

- **OAC 3745-55-44(B)** requires that the post-closure cost estimate be adjusted for inflation 60 days prior to the anniversary date of the establishment of the financial instrument. Please update your post-closure cost estimate for inflation annually. Your June submittal was updated for inflation for 2010 using an inflation factor of 0.9% but not for 2011. The inflation factor for 2010 was 0.96% and the inflation factor for 2011 was 2.1%; and
- **OAC 3745-55-44(E)(2)** for owners/operators using a financial test submittal the updated post-closure cost estimate must be made to the director of the Ohio EPA within ninety days after the close of the entities fiscal year (December 31) following a revision or an update. Please be sure to submit an updated post-closure cost estimate annually.

If you have any questions, or need further clarification of any matter mentioned in this letter, please do not hesitate to contact me at (614) 644-3067 or at isaac.wilder@epa.state.oh.us.

The City of Toledo needs to immediately take the necessary measures to return to compliance with Ohio's environmental laws. Within 14 days of receipt of this letter, The City of Toledo is requested to provide documentation to this office including the steps taken to abate the violations cited above. Documentation of steps taken to return to compliance includes written correspondence, updated policies, and photographs, as appropriate, and may be submitted via the postal service or electronically.

Please be advised that violations cited above will continue until the violations have been properly abated. Failure to comply with Chapter 3734 of the Ohio Revised Code and rules promulgated thereunder may result in a civil penalty of up to \$10,000 per day for each violation. It is imperative that you return to compliance. If circumstances delay the abatement of violations, The City of Toledo is requested to submit written correspondence of the steps that will be taken and the date by which it is certain to attain compliance.

Ms. Amy Wood, Commissioner – Special Projects
Hoffman Road Landfill
Page 3

Sincerely,



Isaac Wilder, Financial Analyst
Division of Materials & Waste Management,
Phone: 614-644-3067
isaac.wilder@epa.state.oh.us

IW/jam

cc: Dawn Pleiman, DERR, NWDO
Don Vogel, DERR. 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.