



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

September 3, 2013

CERTIFIED MAIL

91 7108 2133 3932 0812 1664

Elbert Building Company  
155 Yorkshire Court  
Elyria, Ohio 44035

**RE: ELBERT BUILDING COMPANY  
FINANCIAL RECORDS REVIEW: NOTICE OF VIOLATION  
OHD 004 176 145**

To Those Concerned:

On August 28, 2013, I conducted a financial assurance records review for the facility located at 447 Oberlin Road, Elyria, Lorain County, Ohio (Facility).

According to State of Ohio records, since at least 2005, you have failed to establish and maintain a cost estimate, financial assurance and liability coverage for closure of the Facility, **in continuing violation of Ohio Administration Code (OAC) rules 3745-55-42, 3745-55-43 and 3745-55-47**, as described in the State's March 18, 2005, *Amended Complaint for Permanent Injunctive Relief and Civil Penalties, State of Ohio, ex rel. Jim Petro, Attorney General of Ohio, Plaintiff, v. Lorne J. Elbert, Jr., dba Elbert Excavating and Wrecking, and Elbert Building Co., Inc. and Kasper Properties, Inc., Defendants., Lorain County Court of Common Pleas, Case No. 03CV136143.*

Included in the Complaint were counts for illegal hazardous waste storage (Count 6) and disposal (Count 7), failure to have and implement a closure plan (Count 8), and failure to establish financial assurance (Counts 11 and 12) and liability coverage (Count 10) for closure.

Subsequently, in accordance with a Ninth District Court of Appeals decision, on May 7, 2009, the Lorain County Court granted a summary judgment in favor of the State of Ohio. All counts cited above were included in the Ninth District's decision. Financial assurance must be established under the Resource Conservation and Recovery Act (RCRA) to ensure a third party could complete closure if the owner/operator is unable or unwilling to do so and therefore protect public resources from having to be expended cleaning up sites.

You need to prepare and submit for Ohio EPA approval a closure plan for the Facility, prepare and submit a closure cost estimate, establish and maintain financial assurance for closure, and establish and maintain liability coverage for third-party claims for sudden and non-sudden hazardous waste releases, and you need to complete closure at the Facility.

If you have any questions or concerns regarding this letter and its contents, please do not hesitate to contact me. I can be reached at (614) 644-2933 or [shawn.sellers@epa.ohio.gov](mailto:shawn.sellers@epa.ohio.gov).

Sincerely,



Shawn M. Sellers, P.E.  
Division of Materials and Waste Management  
Engineering, Remediation and Authorizations Section

SMS/ljm

ec: Frank Zingales, DMWM, NEDO  
James Carr, AGO, EES  
Nicholas Bryan, AGO, EES  
Barry Chapman, DMWM, CAS, CO  
Mitch Mathews, DMWM, CAS, 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.