



40 years and moving forward

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

September 16, 2013

CERTIFIED MAIL 91 7108 2133 3932 0812 1114

Scott Ellis
Business, Government and Legal Affairs Manager
Perma-Fix Environmental Services, Inc.
575 Oak Ridge Turnpike, Suite 200
Oak Ridge, Tennessee 37830

**Re: Environmental Processing Services, Inc. (OHD 000 608 588)
Financial Record Review: Notice of Violation**

Dear Mr. Ellis,

On September 13, 2013, I completed a financial record review for the Environmental Processing Services, Inc. (EPS) facility referenced above. I evaluated your facility for compliance with the closure cost estimate, financial assurance for closure, and liability requirements set forth in Ohio Administrative Code (OAC) rules 3745-55-42, 3745-55-43, and 3745-55-47.

To demonstrate financial assurance for closure, Perma-Fix uses a financial guarantee bond. The surety bond (No. 1014918) was issued by Lexon Insurance Company. On March 5, 2012, Ohio EPA received a bond rider increasing the bond amount to \$843,631.00.

Upon review of the documentation noted above, I have found the following violations of Ohio's hazardous waste laws:

- **OAC rule 3745-55-42(E):** A copy of the facility's current, detailed closure cost estimate prepared and maintained in accordance with paragraphs (A) and (B) of this rule must be submitted annually to the director.

Perma-Fix has failed to submit an adjusted closure cost estimate. While the financial assurance mechanism has been updated for annual inflation through 2012, Ohio EPA has not received an updated closure cost estimate for 2012 and 2013. The closure cost estimate must be adjusted within 60 days prior to the anniversary of the establishment of the financial instrument and submitted annually. The anniversary date of your financial instrument is January 16.

To abate the above violation, Perma-Fix needs to submit an adjusted closure cost estimate in accordance with the current, approved Closure Plan. Pursuant to 3745-55-42(B), 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 for 2013 is 1.7%.

If the updated closure cost estimate exceeds the current value of the bond, within 60 days after the increase, Perma-Fix must either increase the penal sum of the bond to an amount at least equal to the current closure cost estimate or obtain other financial assurance to cover the increase, in accordance with 3745-55-43(B)(7).

- **OAC rule 3745-55-47:** An owner or operator of a hazardous waste treatment, storage, or disposal facility, or group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs.

Correspondence from September of 2012 indicated that Perma-fix was working on re-establishing liability coverage for the EPS facility. However, as of this date, Ohio EPA has not received documentation of liability coverage.

To abate this violation, Perma-Fix needs to establish liability coverage in accordance with OAC rule 3745-55-47(A) and meeting the appropriate wording requirements. A signed original of the document must be submitted to Ohio EPA.

Perma-Fix needs to immediately take steps to return to compliance with Ohio's environmental laws. Within 14 days of receipt of this letter, Perma-Fix is requested to submit to this office documentation of 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 to melissa.cheung@epa.state.oh.us.

Please be advised that the 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 the violations, Perma-Fix is requested to submit written correspondence of the steps that will be taken by date certain to attain compliance.

Additional Areas of Concern:

- Pursuant to **OAC rule 3745-55-43(B)(3)**, an owner or operator who uses a surety bond to satisfy the requirements of this rule must also establish a standby trust fund. An originally signed duplicate of the trust agreement must be submitted to the director with the surety bond.

Upon review of the file, I have not been able to find documentation of a current standby trust agreement. Previously, a funded trust with JP Morgan (originally established with BankOne) was used for financial assurance for the EPS facility, before being replaced by the surety bond. My understanding is that the funds in the trust were released and the fund was terminated in 2006. Without a standby trust fund as required for use of a surety bond, Perma-Fix will be in violation of OAC rule 3745-55-43(B)(3).

Please clarify this matter as soon as possible and submit an originally signed standby trust agreement with the wording specified in paragraph (A) of OAC 3745-55-51.

- Upon review of the original surety bond (received February 21, 2006) and the subsequent bond riders, the bond does not fully reference the EPS facility as the covered facility as required in the wording specified in paragraph (B) of OAC rule 3745-55-51.

With your financial assurance submittal, please ensure that the EPS facility (with the correct US EPA identification number, name, and address) is referenced as the covered facility on the bond.

If you have any questions or need further clarification of any matter mentioned in this letter, please feel free to contact me at (614) 644-3067 or at melissa.cheung@epa.state.oh.us.

Sincerely,



Melissa Cheung
Engineering, Remediation, and Authorizations Section
Division of Materials and Waste Management

MC/ljm

cc: Brian Gitzinger, DERR, SWDO

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.