



September 18, 2013

CERTIFIED MAIL 91 7108 2133 3932 0812 1084

Mr. Donald R. Koski
2012 Renko Rd.
Ashtabula, OH 44004

Yogi Chokshi, Vice President
Reserve Environmental Services, Inc.
4633 Middle Road
P.O. Box 1038
Ashtabula, Ohio 44005-1038

**Re: Reserve Environmental Services, Inc. (OHD 980 793 384)
Financial Record Review: Notice of Violation**

Dear Mr. Koski and Mr. Chokshi:

On September 16, 2013, I completed a financial record review for the Reserve Environmental Services, Inc. (RES) facility referenced above. I evaluated the facility for compliance with the financial assurance and liability requirements set forth in Ohio Administrative Code (OAC) rules 3745-66-42 through 3745-66-47.

I also evaluated the facility for compliance with the financial assurance-related requirements set forth in the October 28, 2003, Modified Consent Order, *State of Ohio, ex rel. Jim Petro v. Reserve Environmental Services, Inc. and Donald R. Koski, Case No. 93-CV-563*.

To demonstrate compliance with the financial assurance requirements, RES maintains a Letter of Credit (LOC) issued by Key Bank in the amount of \$852,000.00. The LOC (No. S91/90343) has a current expiration date of September 1, 2014.

On August 10, 2012, Ohio EPA sent a Notice of Violation (NOV) letter citing violations of financial assurance rules as well as the Modified Consent Order.

On September 13, 2013, RES submitted the following documentation:

- A combined closure, post-closure, corrective action cost estimate (dated March 5, 2012) of \$11,396,611, including inflationary adjustments for 2007 through 2012;
- Financial statements for Reserve Environmental Services, Inc. from 2006 through 2010, financial statements for Koski Construction Company for 2009 and 2010, Individual Income Tax Returns for Donald Koski from 2007 through 2011, a personal financial statement; and
- An ACORD Certificate of Liability Insurance which included policies issued by Starr Indemnity and Liability Company, with an effective date of May 26, 2012 and an expiration date of May 26, 2013.

Upon review of the financial assurance documentation noted above, RES remains in violation of the following rules and requirements of the October 28, 2003 Modified Consent Order cited in the August 10, 2012 Notice of Violation (NOV) letter:

- **OAC rules 3745-66-42(B) and 3745-66-44(B) and paragraphs 14, 19, 27, and 35 of the October 28, 2003 Modified Consent Order:** RES must update the closure and post closure cost estimates for inflation and submit them annually.

In response to the NOV letter (dated August 10, 2012), RES submitted an updated closure and post-closure cost estimate on September 13, 2012. However, the submittal used an incorrect inflation adjustment of 0.9% for 2012. The inflation factor for 2012 should be 2.1%. Also, Ohio EPA has not received the required updated estimates for 2013. The inflation factor for 2013 is 1.7%. *Therefore, RES remains in violation of OAC rules 3745-66-42(B) and 3745-66-44(B) and paragraphs 14, 19, 27, and 35 of the October 28, 2003 Modified Consent Order.*

- **OAC rules 3745-66-43 and 3745-66-45 and paragraphs 40 and 42 of the October 28, 2003 Modified Consent Order:** Paragraph 40 of the modified consent order requires that by March 1st of each year RES must submit to Ohio EPA documentation of financial responsibility, or in the alternative, if RES is unable to obtain financial assurance, RES must update their inability to pay documentation. Each update must include all information listed in Attachment B of the October 28, 2003, Modified Consent Order.

Documentation for 2012 was due by March 1, 2013. As of this date, RES has failed to submit documentation of financial responsibility or to adequately update their inability to pay documentation. *Therefore, RES remains in violation of OAC rules 3745-66-43 and 3745-66-45 and paragraphs 40 and 42 of the October 28, 2003 Modified Consent Order.*

- **OAC rule 3745-66-47 and paragraph 41 and 42 of the October 28, 2003 Modified Consent Order:** OAC rule 3745-66-47 requires that 3rd party liability coverage be evidenced by a Hazardous Waste Facility Liability Endorsement or a Certificate of Liability Insurance. The required wording for these documents is specified in paragraph (I) and (J) of OAC 3745-55-51.

RES's September 13, 2013 submittal included an ACORD Certificate of Liability Insurance (dated September 11, 2012) for policies issued by Starr Indemnity and Liability Company. In the cover letter, RES stated that it is unable to provide any other documentation of third party liability coverage. RES must maintain liability coverage for sudden and nonsudden accidental occurrences, with limits of at least \$4,000,000 per occurrence and \$8,000,000 annual aggregate, exclusive of legal defense costs. The policies listed on the ACORD certificate do not meet the requirements for third party liability coverage.

Paragraph 41 of the modified consent order requires that by March 1st of each year that RES must submit to Ohio EPA documentation of liability coverage, or in the alternative, if RES is unable to obtain liability coverage, RES will update their inability to pay documentation. Each update must include all information listed in Attachment B of the October 28, 2003 Modified Consent Order. Documentation for 2012 was due by March 1, 2013. As of this date, RES has failed to submit documentation of liability coverage meeting the requirements or to update their inability to pay documentation. *Therefore, RES remains in violation of OAC rule 3745-66-47 and paragraph 41 and 42 of the October 28, 2003 Modified Consent Order.*

RES needs to submit an updated closure and post-closure cost estimate with the correct inflation factors, as well as documentation of financial assurance and third party liability coverage or updated inability to pay documentation. The inability to pay documentation must include all information specified in Attachment B of the October 28, 2003 Modified Consent Order including business and individual income tax returns (federal and state), annual financial reports, etc.

Reserve Environmental Services, Inc. needs to immediately take steps to return to compliance with Ohio's environmental laws. Within 14 days of receipt of this letter, Reserve Environmental Services, Inc. is requested to submit to this office the documentation needed 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, Reserve Environmental, Inc. is requested to submit written correspondence of the steps that will be taken by date certain to attain compliance.

Mr. Donald R. Koski, Mr. Yogi Chokshi
Reserve Environmental Services, Inc.
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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 melissa.cheung@epa.state.oh.us.

Sincerely,



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

MC/sw

ec: Kelly Smith, CO, CAS, DMWM
Tim Kern, AGO, EES
Frank Zingales, NEDO, DMWM

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.