

INTEROFFICE MEMO



To: Schott Metal Products, Inc. Financial Assurance File

From: Melissa Cheung, DMWM, Financial Assurance & Remediation Unit

Date: September 20, 2013

Subject: Schott Metal Products, Inc. (OHD 004 192 720) Financial Record Review (Memo to File)

On September 19, 2013, I completed a financial record review for the Schott Metal Products, Inc. (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 August 28, 1990 *Consent Order, State of Ohio v. Schott Metal Products, Inc. et al., Case No. CV 89-08-2396*, and the February 25, 2002 *Agreed Judgment Entry, Case No. CV 1989-08-2396*, both filed in Summit County, Ohio Court of Common Pleas.

On July 7, 2005, SMP was referred to US EPA to pursue closure and corrective actions. In 2006, US 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.

On April 16, 2013, a proposed consent decree was lodged with the United States District Court for the Northern District of Ohio in the lawsuit entitled *United States v. Schott Metal Products, Inc. and The Estate of Samuel Schott*, Civil Action No. 5:13-cv-00950. The proposed consent decree requires SMP to comply with the 2006 Administrative Order by implementing a "work plan," and an addendum thereto, recently approved by US EPA. The proposed consent decree further requires payment of a civil penalty of \$375,000, for failure to timely comply with the 2006 Administrative Order.

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 National Bank of Ohio (now FirstMerit Bank) on April 24, 1996. The trust fund was valued at \$208,556.09, as of July 31, 2013. Although US EPA is pursuing enforcement of this case, Ohio EPA is the beneficiary of the trust fund used as the financial assurance mechanism for closure. Previously, there had been correspondence with Steven Paffilas, Assistant US Attorney, regarding possibly either releasing funds from the trust for closure expenses or amending the trust agreement to make US EPA the beneficiary.

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Schott Metal Products, Inc. Financial
To: Assurance File

Schott Metals Products, Inc.
(OHD 004 192 720)
Financial Record Review
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Upon review of the current financial assurance documentation, Schott Metal Products, Inc. remains in violation of the following:

OAC rule 3745-66-42: Closure Cost Estimate

SMP has failed to submit an updated detailed closure cost estimate. 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. Without an updated closure cost estimate it is impossible to tell if the value of the trust account is sufficient to cover the cost of closure.

OAC rule 3745-66-47: Liability Coverage

SMP has failed to submit documentation demonstrating third party liability coverage.

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.

This memo was written to file because of the ongoing US EPA enforcement actions.

MC/ljm

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