



September 24, 2013

CERTIFIED MAIL 91.7108 2133 3932 0812 0520

Mr. Michael E. Jeffries
Jeffries Bros. Excavating & Paving, Inc.
4634 Woodland Ave. NW
Canton, Ohio 44641

**Re: Jeffries Bros. Excavating & Paving, Inc. (OHD 004 228 003)
Financial Record Review: Notice of Violation**

Dear Mr. Jeffries:

On September 24, 2013, I completed a financial record review for your facility referenced above. I evaluated your facility for compliance with the post-closure cost estimate and financial assurance requirements set forth in Ohio Administrative Code (OAC) rules 3745-55-44 and 3745-55-45.

On August 22, 2008, Ohio EPA received an updated post-closure cost estimate of \$250,327.20.

To demonstrate financial assurance for post-closure care, Jeffries maintains a Closure/Post-Closure insurance policy (No. CPC 476-24-14), issued by American Specialty Lines Insurance Company. The policy has a face value of \$3,500,000, with an expiration date of December 31, 2031.

In previous Notice of Violation (NOV) letters, Ohio EPA noted several issues regarding the language of the insurance policy and requested changes to meet the requirements specified in OAC rule 3745-55-45(E).

To date, Ohio EPA has not received an updated policy or any information regarding the differences in language between Policy No. CPC 476-24-14 and that required by OAC rule 3745-55-45(E). However, recent correspondence indicates that you are currently working with Ohio EPA Northeast District Office on amending the post-closure plan and will also be addressing the financial assurance issues.

Based upon review of the documentation noted above, I am abating the previous violation of OAC rule 3745-55-51(E) and citing a violation of OAC rule 3745-55-45(E):

OAC 3745-55-45(E): An owner or operator may satisfy the requirements of this rule by obtaining post-closure insurance which conforms to the requirements of paragraphs (E) to (E)(11)(b) of this rule and submitting a certificate of such insurance to the director. The policy must conform in all respects with the requirements of OAC rule 3745-55-45(E). The policy submitted to Ohio EPA includes provisions that do not meet the rules referenced above. As previously noted:

- The Certificate of Insurance identifies both Jeffries and Republic technologies International, LLC. (RTI) as the Insured, whereas the policy identifies the Named Insured as only RTI. Please clarify this discrepancy and revise the Certificate and policy if appropriate.
- Section V. Territory - this section reads, "This Policy only applies to a Claim arising from Closure Costs or Post-Closure Costs incurred at **Solid Waste Facilities** located in the United States, its territories or possession, or Canada, and only if such Claim are made or brought in the United States, its territories or possessions, or Canada." The term "Solid Waste Facility" is also used throughout other Sections of the policy and endorsements.
 - The unit referenced above is subject to the rules and requirements for Hazardous Waste facilities. The policy should refer to Hazardous Waste Facilities/units.
- Section VI. Conditions (B) Cancellation - this sections reads, "The Company shall not cancel, terminate or fail to renew the coverage provided herein except for failure to pay the full premium in accordance with the schedule shown in Item 5 in the Declarations. The Company shall notify the Insured and the Regulatory Body of its intent to cancel, terminate, or not to renew by sending, by certified mail, to the Insured at the address shown in this policy and to the Regulatory Body, written notice stating the date not less than 120 days thereafter allowing time for receipt of notice on which such cancellation, termination, or failure to renew shall be effective."
 - OAC rule 3745-55-45(E)(8) requires that cancellation, termination, or failure to renew the policy cannot occur until 120 days **after** both the facility and the Director have received notification. The 120 days begins when both the facility and the Director have received notice (as evidenced by the return receipts). The language in the current policy seems to start the 120 days when the insurance company sends notice, instead of when notice is received by both parties.

Also noted in this section, "This policy may be canceled by the Named Insured pursuant to applicable statute by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating the date thereafter the cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the Policy Period."

- This language seems to allow for cancellation of the policy **without notification of the Director of Ohio EPA**. As noted above, cancellation of the policy cannot occur until 120 days after both the facility and the Director has received notification. Furthermore, OAC rule 3745-55-45(E)(6) requires that the owner or operator maintain the policy in full force and effect until the Director consents to termination of the policy by the owner or operator as specified in paragraph (E)(11) of OAC 3745-55-45.

The policy language needs to be changed to meet the requirements as stated above.

- Endorsement 3 - this endorsement creates sub-limits of liability at \$50,000 aggregate for SO1 (Drum Storage Area) and SO2 (Waste Acid Sump). These areas are also listed on the declarations page. However, these areas are not owned by Jeffries Bros. and are a remnant of the policy when it was used by previous owner/operator RTI. Jeffries Bros. does not have to maintain financial assurance for these units. As such, Jeffries Bros. may want to consider having these other units removed from the declarations page and the endorsement canceled.

Please submit a revised insurance policy (including all endorsements) which addresses the concerns noted above and meets all of the requirements specified in OAC rule 3745-55-45(E). Please also submit a signed Certificate of Insurance for Closure or Post-Closure Care with the wording specified in OAC rule 3745-55-51(E) and consistent with the revised policy.

Jeffries Bros. Excavating & Paving, Inc. needs to immediately take steps to return to compliance with Ohio's environmental laws. Within 14 days of receipt of this letter, Jeffries Bros. Excavating & Paving, Inc. 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 to melissa.cheung@epa.state.oh.us.

Please be advised that the violation cited above will continue until the violation has 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, Jeffries Bros. Excavating & Paving, Inc. is requested to submit written correspondence of the steps that will be taken by date certain to attain compliance.

Mr. Michael E. Jeffries
Jeffries Bros. Excavating & Paving, Inc.
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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: Patricia Natali, NEDO, DERR

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.