

September 24, 2013

CERTIFIED MAIL 91 7108 2133 3932 0812 1060

Mr. Ed McCabe  
McCabe Corporation  
3470 Brecksville Road  
Richfield, Ohio 44286

**RE: Closure and Financial Assurance: Notice of Violation  
636 North Irwin Street, Dayton, Ohio  
OHD 980 700 942**

Dear Mr. McCabe:

On September 23, 2013, I conducted a financial record review of documentation on file for the 636 North Irwin Street facility, Dayton, Montgomery County, Ohio Facility referenced above. I evaluated the facility for compliance with financial assurance and liability requirements as set forth in the Ohio Administrative Code (OAC) rules 3745-55-42, 3745-55-43 and 3745-55-47.

In addition, I evaluated the facility for compliance with the closure requirements set forth in the October 22, 1998 Consent Order (Montgomery County Court of Common Pleas, Case No. 08-3449) *State of Ohio, ex rel. Betty Montgomery, Attorney General of Ohio and Republic Environmental Services (Ohio), Inc., Republic Environmental Systems, Inc. and BRAC, Inc.*

On February 13, 2009, Montgomery County Court of Common Pleas Judge Mary Weisman ordered that McCabe et al. submit a closure cost estimate within 60 days of her ruling in *State of Ohio, ex. Rel. Nancy H. Rogers, Attorney General of Ohio vs. Republic Environmental (Ohio), Inc. et al.*, (Montgomery County Court of Common Pleas Case No. 98-3449). An amended closure plan was received by Ohio EPA on May 21, 2011. An additional amended closure plan was received by Ohio EPA on September 17, 2012. Ohio EPA sent a notice of deficiency to you for the amended closure plan on February 25, 2013.

To demonstrate financial assurance for closure, the 636 North Irwin Street facility uses a trust fund entered into with Fifth-Third Bank on December 12, 1986. The current Trustee, The Bank of New York Mellon, provided the most recent annual valuation of the trust on November 14, 2012, totaling \$234,784.36. An updated closure cost estimate has not been provided since October of 1998.

**Upon review of the financial assurance documentation, the following violations were found:**

- Failure to have a current closure cost estimate in violation of OAC rule 3745-55-42;
- Failure to maintain adequate financial assurance for closure in violation of OAC rule 3745-55-43; and
- Paragraph 8 of the October 22, 1998 Consent Order requiring Defendants to maintain compliance ... with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in Ohio Revised Code Chapter 3734 and the OAC Chapters 3745-50 through 3745-69. This provision includes compliance with the above noted financial assurance regulations.

**Additional Concern:**

In a financial record review letter sent to you on September 18, 2012, It was noted that McCabe Corporation has a general liability policy with Westchester Surplus Lines Insurance Company, policy number G24641764001. On February 13, 2009, Montgomery County Court of Common Pleas Judge Mary Weisman ordered that McCabe et al. obtain liability coverage within sixty (60) days of the date of this Order or such other timeframe as this Court may determine by further order in the amount and form required by OAC rule 3745-55-47.

OAC rule 3745-55-47(A)(1)(a) requires that each insurance policy must be amended by attachment of the "Hazardous Waste Facility Liability Endorsement" or evidenced by a "Certificate of Liability Insurance." The wording of the endorsement must be identical to the wording specified in paragraph (I) of rule 3745-55-51 of the Administrative Code. The wording of the certificate of insurance must be identical to the wording specified in paragraph (J) of rule 3745-55-51. The owner or operator must submit a signed duplicate original of the endorsement or certificate of insurance to the director.

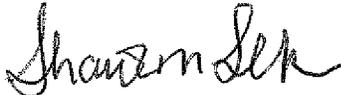
Upon a review of your financial assurance file, documentation required to comply with OAC rule 3745-55-47(A)(1)(a) and the February 13, 2009 judgment entry has not been submitted. **Please submit the required signed duplicate original of the endorsement or certificate of insurance to the director within sixty (60) days of this notice.**

Mr. Ed McCabe  
636 North Irwin Street – Dayton, OH  
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If you have any questions, please feel free to call me at (614) 644-2933 or email me at [shawn.sellers@epa.state.oh.us](mailto:shawn.sellers@epa.state.oh.us).

Sincerely,



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

SMS/ljm

ec: Brian Gitzinger, DERR, SWDO  
Randall Kirkland, DERR, SWDO  
George Strobel, DMWM, SWDO  
Kelly Jeter, DMWM, CO  
Kelly Smith, DMWM, CO  
George Horvath, AGO

**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.