



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

September 30, 2013

CERTIFIED MAIL 91 7108 2133 3932 0812 0476

Mr. Jim Krimmel
Zaclon, LLC
2981 Independence Road
Cleveland, Ohio 44125

**RE: Zaclon, LLC – Cleveland, Cuyahoga County, OH
Financial Record Review: Notice of Violation
OHD 004 184 768**

Dear Mr. Krimmel:

On September 29, 2013, I conducted a financial record review of documentation on file for the Zaclon, LLC (Zaclon), Cleveland, Cuyahoga County, OH facility. On October 8, 2009 and May 28, 2010, Zaclon was issued Director's Final Findings and Orders (Orders) as a result of illegal hazardous waste at the Zaclon facility in Cleveland. I evaluated the facility for compliance with the closure financial assurance, closure cost estimates, and liability requirements as set forth in Ohio Administrative Code (OAC) rules 3745-55-42, 3745-55-43 and 3745-55-47.

To demonstrate financial assurance for closure, a Standby Letter of Credit (LOC), No. CTCS-911785, was issued by JPMorgan Chase on March 28, 2011. On March 30, 2011 and July 20, 2011, Ohio EPA received Amendments 1 and 2 of to the LOC respectively, correcting wording in the language of the LOC. The most recently submitted closure cost estimate totaling \$28,160.00 was supplied by Zaclon on May 23, 2012.

Upon a review of the financial assurance documentation, I am rescinding the violation cited on September 19, 2011:

- **OAC Rule 3745-55-43(D)(1), Closure Letter of Credit.**

On September 19, 2011, you were cited for a violation of rule OAC 3745-55-43(D)(1) because the LOC on file was a copy and not an original. Zaclon supplied a Fed Ex receipt showing that on Tuesday, March 29, 2011 the original LOC was received by Ohio EPA. Therefore, the above referenced violation is hereby rescinded.

Ohio EPA will work with JPMorgan in the next few months to obtain and reissued original of the LOC or obtain other certainties that a copy of the LOC would be acceptable at the time of draft.

I found the following continued violation of Ohio's hazardous waste laws. In order to correct these violations you must do the following and send me the required information **immediately** upon of your receipt of this letter:

- 1. OAC Rule 3745-55-43(D)(3), Must Establish a Standby Trust Fund When Using a Letter of Credit:** An owner or operator who uses a letter of credit to satisfy the requirements of this rule must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instruction from the director.

While Zaclon submitted a LOC mechanism effective March 28, 2011, Zaclon has not submitted evidence of a standby trust fund. This standby trust fund must meet the requirements of the trust fund specified in paragraph (A) of OAC rule 3745-55-43 except that an originally signed duplicate of the trust agreement must be submitted to the director with the LOC. OAC rule 3745-55-43(A)(2) specifies that the wording of the trust agreement must be identical to the wording specified in paragraph (A)(1) of rule 3745-55-51 of the Administrative Code.

- Zaclon must immediately submit a standby trust fund, meeting the requirements of OAC rules 3745-55-43(D)(3) and 3745-55-43(A), and meeting the wording requirements of OAC rule 3745-55-51(A)(1).

- 2. OAC Rule 3745-55-43(D)(2), Letter of Credit Wording:** The wording of the letter of credit must be identical to the wording specified in paragraph (D) of rule 3745-55-51 of the Administrative Code.

While Zaclon amended the JPMorgan Chase Bank LOC on March 30, 2011 and July 20, 2011, LOC, the wording is still not identical to the wording specified in paragraph (D) of rule 3745-55-51 of the Administrative Code. Specifically, the fifth paragraph should be amended to read "Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will deposit the amount of the draft directly into the standby trust fund of Zaclon, LLC. in accordance with your instructions." The coordination of compliance with the wording of the LOC and the establishment of the standby trust fund will be necessary.

- Zaclon must immediately submit an amendment to LOC No. CTCS-911785 meeting the wording specified in paragraph (D) of rule 3745-55-51 of the Administrative Code or provide alternate financial assurance as specified in OAC 3745-55-43.

3. OAC Rule 3745-55-47(A), Owner or Operator Must have Sudden Liability

Coverage: An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a 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 a least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs.

Zaclon has not submitted demonstration of Sudden Third Party Liability Coverage in accordance with OAC 3745-55-47(A) as required by the October 8, 2009 and May 28, 2010 Orders.

- Zaclon must immediately submit adequate demonstration of liability coverage as specified in paragraph (A)(1), (A)(2), (A)(3), (A)(4), (A)(5), or (A)(6) of rule 3745-55-47.

Zaclon needs to immediately take the necessary measures to return to compliance with Ohio's environmental laws. Within 14 days of receipt of this letter, Zaclon 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 Shawn.Sellers@epa.state.oh.us.

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

Additional Concern:

The May 23, 2012 closure cost estimate is the latest submitted cost estimate by Zaclon. It is my understanding that many of the closure activities in this estimate have been completed. Per your amended closure plan approved on April 4, 2012, these closure activities will be completed for a period of at least 24 months while a plan for site wide assessment and remediation is developed pursuant to the previous Orders and the Ohio Voluntary Action Program. It is my understanding that you will be working toward addressing these issues in the coming months and amending your closure plan.

OAC rule 3745-55-42(B) requires that During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with rule 3745-55-54 of the Administrative Code. 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."

Since the anniversary date of your financial assurance mechanism is March 28th, you should have submitted an updated estimate within sixty days prior to March 28, 2013. While I have not cited a violation of this rule at this time, please be aware that you are required to submit annual updates of your closure cost estimate.

If you have any questions, please feel free to call me at (614) 644-2933 or email me at shawn.sellers@epa.ohio.gov.

Sincerely,



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

SMS/ljm

ec: Shannon Ryan, DERR, NEDO
Frank Popotnik, DMWM, NEDO

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.