

INTEROFFICE MEMO



To: Brandon Partners L.P. Financial Assurance File

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

Date: September 30, 2013

Subject: Brandon Partners, L.P. (OHD 980 681 571), Former North East Chemical Corp.
Financial Record Review (Memo to File)

On September 30, 2013, I completed a financial record review for the Brandon Partners L.P. facility referenced above. I evaluated the facility for compliance with the closure cost estimate, financial assurance, and liability requirements set forth in Ohio Administrative Code (OAC) rules 3745-55-42, 3745-55-43, and 3745-55-47 as well as the November 28, 2011 Consent Order, *State of Ohio v. Brandon Partners, L.P., et al.*, Case No. CV-07-628840, filed in the Cuyahoga County Court of Common Pleas.

As the owner of the facility previously operated by North East Chemical Corporation (NECC), Brandon Partners is required to close the facility in accordance with OAC rules 3745-55-11 through 3745-55-20. The amended closure plan was approved with modifications on May 28, 2010.

In the previous Notice of Violation (NOV) letter dated August 17, 2012, Ohio EPA cited violations of OAC rules 3745-55-42, 3745-55-43, and 3745-55-47 and Paragraphs 22, 23, and 24 of the November 28, 2011 Consent Order.

The most recent financial assurance documentation on file includes:

- A proposal dated July 5, 2011 for services to complete five tasks associated with closure prepared by GETCO Environmental Consultants, Inc. (GETCO) for \$274,915.00;
- A trust agreement entered into as of October 25, 2012 by and between Brandon Partners and Key Bank;
- An account statement from Key Bank showing the current value of \$274,942.70 for the trust, as of August 31, 2013; and
- A Hazardous Waste Facility Certificate of Liability Insurance for Brandon Partners (received on June 4, 2013).

The policy (No. R SSPL E 000257-00), issued by Rockhill Insurance Company, covers sudden accidental occurrences. The limits of liability are \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The policy has an effective date of December 24, 2012.

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On March 22, 2013, Brandon Partners submitted an invoice and reimbursement request dated March 13, 2013 for \$180,057.00 to be paid to GETCO for closure activities completed. In a letter dated May 13, 2013, Ohio EPA requested additional documentation for evaluation of the reimbursement request, including an updated detailed closure cost estimate, clarification of discrepancies between the submitted invoice and work reported, and detailed invoices. In response, GETCO submitted an updated summary invoice and supporting documentation, including timesheets and detailed invoices. However, Ohio EPA has yet to receive an updated closure cost estimate as requested.

In the interests of facilitating closure of the site, Ohio EPA is currently in discussion with Brandon Partners regarding a possible recommendation for a partial release of funds associated with closure work. The release would require certain stipulations, including the submittal of an updated and complete closure cost estimate.

Upon review of the documentation noted above, the following violations previously cited have not been abated:

OAC rule 3745-55-42 and Paragraphs 22 and 23 of the Consent Order: Closure Cost Estimate

Brandon Partners has failed to submit a revised closure cost estimate to reflect the remaining closure activities to be conducted. The quotation by GETCO, Inc. is for preliminary work and would need to be expanded and have closure certification and contingency costs added to form the basis for a closure cost estimate. The cost estimate must account for all activities required in the approved Closure Plan.

OAC rule 3745-55-43 and Paragraphs 23 of the Consent Order: Financial Assurance for Facility Closure

Brandon Partners has failed to provide financial assurance at least equal to the amount of the revised closure cost estimate. As a current closure cost estimate has not been submitted, this violation cannot be abated.

OAC rule 3745-55-47 and Paragraph 24 of the Consent Order: Liability Requirements

Since the last review, Brandon Partners has submitted a Certificate of Liability Insurance for Policy No. R SSPL E 000257-00 issued by Rockhill Insurance Company. However, Ohio EPA has not received a signed duplicate original as required by rule 3745-55-47(A)(1)(a). Once a signed certificate has been received, this violation can be abated.

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To abate the above violations, Brandon Partners needs to submit an updated closure cost estimate reflecting remaining costs for closure at the site, financial assurance at least equal to the updated closure cost estimate, and a signed original Certificate of Liability Insurance.

This memo is being written to file in light of the ongoing discussions with Brandon Partners.

MC/ljm

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