



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

September 30, 2013

**CERTIFIED MAIL 91 7108 2133 3932 0812 0384**

Axalta Coating Systems  
c/o Jennifer Ellison  
4055 Embassy Parkway, Suite 100  
Fairlawn, OH 44333

**RE: Axalta Coating Systems (Formerly DuPont), Toledo Plant – Toledo, OH  
Financial Record Review: Notice of Violation  
OHD 005 041 843**

Dear Ms. Ellison:

On September 29, 2013, I conducted a financial record review of the Axalta Coating Systems Toledo Plant – Toledo, OH (Axalta). As indicated by you, on February 1, 2013, The Carlyle Group acquired DuPont Performance Coatings from E.I. DuPont de Nemours (DuPont), and the name Axalta Coating Systems became legally effective in the U.S. on May 2, 2013. 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, & 3745-55-47.

To demonstrate financial assurance for closure care, a surety performance bond and standby trust agreement were received on May 5, 2012. A surety performance bond, No. 9085763, was issued by Fidelity and Deposit Company of Maryland. The current amount of the bond is \$706,008.00, effective April 1, 2012. On May 2, 2013, Ohio EPA received a surety bond rider amending the Principal name from E.I. Du Pont de Nemours and Company (DuPont) to Axalta Coating Systems, LLC. A standby trust agreement was entered into April 30, 2012 by and between DuPont and JP Morgan Chase, NA.

To demonstrate third party liability coverage, a Hazardous Waste Facility Certificate of Liability Insurance, with Old Republic Insurance Company (ORIC) was provided effective March 30, 2012. The ORIC policy, No. MWZZ 50636 01, satisfied the third-party liability requirements for sudden accidental occurrences. The pollution liability limits were \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

My September 29, 2013 review of this documentation reveals that Axalta has adequately demonstrated abatement of the following violations discovered during the June 26, 2012 financial record review:

1. ***OAC Rule 3745-55-42(E), Copy of Facility's Detailed Closure Cost Estimate must be submitted annually to the Director:***

By letter dated September 20, 2012, Axalta submitted a closure cost estimate totaling \$706,008.00.

2. ***OAC Rule 3745-55-43(C)(2), Wording of Instrument:***

By letter dated September 20, 2012, Axalta submitted a revised surety performance bond, No. 9085763, meeting the required wording of the instrument. Axalta also increased the surety bond amount to \$706,008 to cover the closure cost estimate.

3. ***OAC Rule 3745-55-47(A)(1)(a), Requirements for the Hazardous Waste Liability Endorsement or Certificate of Liability Insurance:***

By letter dated September 20, 2012, Axalta submitted an adequate Hazardous Waste Certificate of Liability Insurance effective March 30, 2012.

In my September 29, 2013 review of your financial assurance documentation, I found the following new **violations 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 your receipt of this letter:

1. ***OAC Rule 3745-55-42(E), Copy of Facility's Detailed Closure Cost Estimate must be submitted annually to the Director:*** During the active life of the facility, a copy of the facility's current, detailed closure cost estimate prepared and maintained in accordance with paragraphs (A) and (B) of this rule must be submitted annually to the director of Ohio EPA.

Axalta has failed to submit an adjusted closure cost estimate for the Axalta Toledo facility. The last closure cost estimate was submitted with the financial test on September 20, 2012. In accordance with OAC 3745-55-42(B), 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 3745-55-43 of the Administrative Code. Since the anniversary date of the surety bond is April 1, 2012, Axalta should have provided an adjusted closure cost estimate between February 1, 2013 and April 1, 2013. As of September 29, 2013, Ohio EPA has yet to receive the required submission of this cost estimate.

- Axalta must immediately submit an adjusted closure cost estimate. 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." The annual inflation factor was calculated at 1.7%.

2. ***OAC Rule 3745-55-47(A)(1)(a), Requirements for the Hazardous Waste Liability Endorsement or Certificate of Liability Insurance:*** 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 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 of the Administrative Code. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the director.

On September 20, 2012, Ohio EPA received a Hazardous Waste Certificate of Liability Insurance for the Axalta Toledo Facility. The ORIC policy, No. MWZZ 50636 01 covered two DuPont Facilities in Ohio, the Toledo facility and the DuPont facility at 1515 Nicholas Road, Dayton, Ohio. The Dayton Ohio Facility submitted an updated Hazardous Waste Certificate of Liability Insurance for ORIC policy No. MWZZ 50636 01 effective March 30, 2013 which did not include the Axalta Toledo facility.

- Axalta must immediately submit an either an endorsement which must be identical to the wording specified in rule 3745-55-51 of the Administrative Code or a "Certificate of Liability Insurance" which must be identical to the wording specified in paragraph (J) of rule 3745-55-51 of the Administrative code. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the director.

Axalta needs to immediately take the necessary measures to return to compliance with Ohio's environmental laws. Within 14 days of receipt of this letter, Axalta 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.ohio.gov](mailto:Shawn.Sellers@epa.ohio.gov).

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

### **Additional Concern**

The current standby trust agreement provided was entered into April 30, 2012 by and between DuPont and JP Morgan Chase, NA. Please provide written confirmation that the standby trust agreement is still currently valid for the surety bond which was amended from

Ms. Jennifer M. Ellison  
Axalta Coating Systems Toledo Plant – Toledo, OH  
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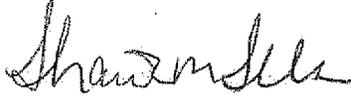
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DuPont to Axalta. Please amend the standby trust agreement to be between Axalta and JP Morgan Chase, NA. or provide a new standby trust agreement for Axalta.

Please ensure you also submit a copy of the financial assurance documentation to USEPA Region 5 for the Axalta Toledo facility. Their approval is also necessary since closure was referred to USEPA on December 13, 2010 to be addressed under Corrective Action.

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

Sincerely,



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

SMS/ljm

ec: Janis D'Amico, DERR, NWDO  
Colleen Weaver, DMWM, NWDO  
Christopher Black, Region 5, USEPA  
Michelle Mullin, Region 5, USEPA

**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.