

## **FINANCIAL ASSURANCE**

### **Interim Certification Application Tailings Management Areas Omya Inc., Verpol Plant Florence, Vermont**

Section (§) 6-901(a) of the Vermont Solid Waste Management Rules (VSWMRs) requires that all existing and private facilities, with exceptions not pertinent here, demonstrate financial responsibility. Omya Inc. (Omya) submits the following as demonstration of its financial responsibility in support of this application for Interim Certification, and as a demonstration of its commitment to and assurance of the protection of public welfare and the environment.

Pursuant to VSWMR § 6-901(b), evidence of financial responsibility is to be provided for closure and, as appropriate, post-closure care. Financial responsibility is provided so that, upon abandonment, cessation, or interruption of the operation of a facility, all appropriate measures may be taken to prevent present and future damage to the public health and safety and to the environment.

In accordance with VSWMRs § 6-901(c)(3), Omya will establish and submit an irrevocable standby letter of credit ensuring performance of closure or post-closure care in accordance with the standards and requirements specified in Appendix A of the VSWMRs. Because financial responsibility instruments are to be submitted on a form prepared by the Secretary, and because financial responsibility instruments are to be in the amount of the cost estimate for closure and post-closure care, Omya must await the approval of the cost estimates provided in the Closure / Post-Closure Plan (see Part D-4 of the Interim Certification) prior to submission of the requisite form. Nonetheless, Omya intends to submit a letter of credit that meets the requirements of Appendix A, Part A-3 of the VSWMRs, which provides as follows:

- (a) The original copy of the letter of credit will be submitted along with a copy of the Closure / Post-Closure Plan after the Interim Certification Application is approved. The letter of credit is expected to be issued by HSBC Bank USA, N.A., with an office in New York, New York and a branch located at 126 State Street, Albany, New York 12207.
- (b) Omya and the issuing institution will use the letter of credit form supplied by the Secretary. In the meanwhile, Omya has appended to this Financial Assurance a form of Application for Letter of Credit, including the terminology it would expect to be employed, as well as an example of a letter of credit issued by HSBC on behalf of an Omya entity to the benefit of an agency of another state for purposes of illustration only.
- (c) The letter of credit will name Omya as the Applicant and name the State of Vermont, Agency of Natural Resources, Department of Environmental Conservation, Solid Waste Program as the beneficiary.
- (d) The letter of credit will be irrevocable for a term of one year renewable annually unless notice of non-renewal is given to Omya and the Secretary as provided below.
- (e) The letter of credit will ensure that Omya will:

\*\*\*REVISED IN RESPONSE TO VTDEC COMMENTS DATED APRIL 18, 2006\*\*\*

- (1) Perform final closure and/or post-closure care in accordance with the Closure / Post-Closure Plan and other requirements in the Interim Certification; or
  - (2) Perform final closure and/or post-closure care following an order to begin closure or post-closure care issued by the Secretary or by a court, or following issuance of a notice of revocation of the Interim Certification; or
  - (3) Provide alternate financial assurance as specified in Subchapter 9 and Appendix A, of the VSWMRs within 90 days after receipt by the Secretary of a notice of termination of the letter of credit.
- (f) The letter of credit will provide that it can be drawn if and when Omya fails to perform closure and/or post-closure care in accordance with the approved plan or other certification requirement.
- (g) The letter of credit will be issued for at least the amount of the closure and/or post-closure cost estimate.
- (h) Whenever the cost estimate increases to an amount greater than the amount of the letter of credit, within 90 days after the increase, Omya will cause the amount of the credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in Subchapter 9 of the VSWMRs, to cover the increase. Whenever the cost estimate decreases, the amount of the credit may be reduced to the amount of the cost estimate following written approval by the Secretary. Omya will send to the Secretary, by certified mail, notice of an increase or decrease in the amount of the credit within 90 days after the change.
- (i) The letter of credit will remain in force for its term unless the issuing institution sends written notice of non-renewal by certified mail to Omya and to the Secretary. Expiration will not occur, however:
- (1) During the 120 days beginning on the date of receipt of the notice of non-renewal by the Secretary as shown on the signed return receipt; or
  - (2) While a compliance or enforcement action is pending.
- (j) The secretary shall return the original letter of credit to the issuing institution for termination when:
- (1) Omya substitutes alternate financial responsibility for closure and/or post-closure as specified in subchapter 9; or
  - (2) The Secretary notifies Omya, in accordance with § 6-901(l) of the VSWMRs, that it no longer is required to maintain financial responsibility for closure and/or post-closure of the facility.