

## **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)(2), Omya will establish and post a surety bond guaranteeing 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 surety bond that meets the requirements of Appendix A, Part A-2 of the VSWMRs, which provides as follows:

- (a) The original copy of the bond will be submitted along with a copy of the Closure / Post-closure Plan after the Interim Certification Application is approved. The bond will be issued by a surety company approved by the Secretary that is licensed to operate as a surety in the State of Vermont.
- (b) Omya and its surety company will use the surety bond form supplied by the Secretary.
- (c) The surety bond will name Omya as the principal and name the State of Vermont as the obligee.
- (d) The term of the bond will be for two years (i.e., the life of the Interim Certification). A separate bond will be used for post-closure responsibility that would extend through the post-closure period.
- (e) The bond will guarantee that Omya will:
  - (1) Perform final closure or post-closure care in accordance with the Closure / Post-Closure Plan and other requirements in the Interim Certification; or

- (2) Perform final closure 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 cancellation of the bond from the surety.
- (f) The surety will become liable on the bond obligation if and when Omya fails to perform as guaranteed by the bond.
  - (g) The penal sum of the bond will be in an amount at least equal to the amount of the closure or post-closure cost estimate.
  - (h) Whenever the cost estimate increases to an amount greater than the amount of the penal sum of the bond, Omya will, within 90 days after the increase, cause the penal sum of the bond 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 penal sum 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 penal sum within 90 days after the change.
  - (i) The bond will remain in force for its term unless the surety sends written notice of cancellation by certified mail to Omya and to the Secretary. Cancellation will not occur, however:
    - (1) During the 120 days beginning on the date of receipt of the notice of cancellation by the Secretary as shown on the signed return receipt; or
    - (2) While a compliance or enforcement action is pending.
  - (j) Following a determination that Omya has failed to perform final closure or post-closure care in accordance with the approved plans and other Interim Certification requirements when required to do so, the surety will perform final closure or post-closure care in accordance with the terms of the bond, approved plan, and other certification requirements or closure order. As an alternative to performing final closure or post-closure care, the surety may forfeit the full amount of the penal sum to the State.
  - (k) Omya will be entitled to cancel the bond if the Secretary has given prior written consent based on receipt of evidence of alternative financial assurance as specified in Subchapter 9 of the VSWMRs.
  - (l) The Secretary will notify the surety if Omya provides alternate financial assurance as specified in Subchapter 9 of the VSWMRs.
  - (m) The surety will not be liable for deficiencies in the performance of closure by Omya after Omya has been notified by the Secretary that Omya no longer is required by Subchapter 9 of the VSWMRs to maintain financial assurance for closure or post-closure care of the facility.

- (n) As performed either by Omya or by the surety, proper closure or post-closure care will be deemed to have occurred only when the Secretary so determines according to the VSWMRs.