



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

June 12, 2009

Re: **Variance from Classification as a Waste**
Envirite of Ohio, Inc.: OHD980568992
AJYL Recovery Services, LLC: OHD986982155

Envirite of Ohio, Inc.
Attn: Mr. Dave Lobbestale
2050 Central Avenue SE
Canton, Ohio 44707

Dear Mr. Lobbestale:

On June 12, 2009, the director of Ohio EPA granted Envirite of Ohio, Inc. (Envirite) and AJYL Recovery Services, LLC (AJYL) a final variance from classification as a waste. This final variance allows Envirite and AJYL to use and manage recycled materials more like process intermediates and products than wastes. Without this variance, some of AJYL's activities would be regulated as hazardous waste management activities and would require a hazardous waste facility installation and operation permit. Envirite currently has a hazardous waste permit. The variance from classification as a waste is effective on the day of issuance and entry into the director's journal. Both of these occurred today, June 12, 2009.

Also, on April 17, 2009, the director of Ohio EPA provided public notice of his decision to tentatively grant the variance from classification as a waste. Since no comments were received during the 30-day public comment period, there is no responsiveness summary. No changes were made to the variance document since the draft issuance concerning financial assurance instruments.

If you have any comments or questions regarding the variance, please contact Karen Hale at (614) 644-2927.

Sincerely,

Jeremy A. Carroll, P.E.
Manager, Regulatory and Information Services Section
Division of Hazardous Waste Management

cc: Karen Hale, RISS, DHWM
Nyall McKenna/Kris Coder, DHWM, NEDO
Todd Anderson, Legal, OEPA
File

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

PUBLIC NOTICE

Stark County

OHIO EPA ISSUES NOTICE OF TENTATIVE DECISION TO ISSUE A VARIANCE FROM CLASSIFICATION AS A WASTE

On June 12, 2009, pursuant to Ohio Administrative Code (OAC) rule 3745-50-26, the director of Ohio Environmental Protection Agency (Ohio EPA) issued a grant of a variance to Envirite of Ohio, Inc. (Envirite) and AJYL Recovery Services, LLC (AJYL). Envirite is located at 2050 Central Avenue SE, Canton, Ohio 44707, US EPA ID No.: OHD980568992. AJYL is located at 1533 Allen Avenue SE, Canton, Ohio 44707, US EPA ID No.: OHD986982155. The variance applies to certain hazardous secondary materials that Envirite and AJYL will further reclaim for their metal content.

Why are Envirite and AJYL asking Ohio EPA to grant a Variance?

Without this variance, some of AJYL's activities would be regulated as hazardous waste management activities and AJYL would need a hazardous waste facility installation and operation permit. This variance allows AJYL to store and process the liquid and solid metal-bearing concentrates without obtaining a hazardous waste permit. Envirite is already a permitted hazardous waste storage and treatment facility. The variance contains the conditions under which the facilities must operate.

Can I appeal this final variance from classification as a waste?

Yes, if you are an officer of an agency of the state or of a political subdivision, acting in a representative capacity, or any person who would be aggrieved or adversely affected by this variance from classification as a waste, you have the right to appeal this decision to the Environmental Review Appeals Commission (ERAC).

If I decide to appeal this final variance, how and when must I make the appeal?

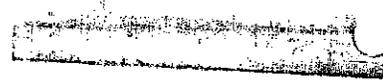
If you file an appeal, you must put it in writing no later than July 17, 2009. Your appeal must explain why you are appealing the action and the grounds you are using for your appeal. The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. You must file your appeal, according to Ohio Revised Code § 3745.04 with ERAC at the following address: **Environmental Review Appeals Commission**, 309 South Fourth Street, Room 222, Columbus, Ohio 43215. You must send a copy of the appeal to the director of Ohio EPA at the following address no later than three (3) days after you file it with ERAC: **Chris Korleski, Director of Ohio EPA**, P.O. Box 1049, Columbus, Ohio 43216-1049.

OHIO E.P.A.

JUN 12 2009

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL



IN THE MATTER OF:

Envirite of Ohio, Inc.
2050 Central Avenue SE
Canton, Ohio 44707

Variance from Waste Classification

And

AJYL Recovery Services, LLC
1533 Allen Avenue SE
Canton, Ohio 44707

I certify this to be a true and accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

Applicants

By: [Signature] Date: 6/12/09

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

This Variance from Classification as a Waste (Variance) is issued to Envirite of Ohio, Inc. (Applicant Envirite) and AJYL Recovery Services, LLC (Applicant AJYL) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Sections 3734.02, 3734.14, 3745.01 and Ohio Administrative Code (OAC) rule 3745-50-23(C).

II. PARTIES COVERED

This Variance shall apply only to the Applicants. No change in ownership of the Applicants or of the Facilities shall in any way alter the Applicants' obligations under this Variance.

III. DEFINITIONS

1. Unless otherwise expressly provided herein, the terms used in this Variance shall have the same meaning as used in ORC Chapter 3734. Whenever the terms listed below are used in this Variance, the following definitions shall apply:
 - a. "Application" shall mean the responses to the criteria listed in OAC rule 3745-50-24 (C), supporting documents for a Variance submitted by the Applicants and information as required by the Variance which is attached hereto and incorporated fully herein.
 - b. "Applicant Envirite" shall mean Envirite of Ohio, Inc. (Envirite). Applicant Envirite will engage in the recovery of metals from hazardous wastes.
 - c. "Applicant AJYL" shall mean AJYL Recovery Services, LLC (AJYL). Applicant AJYL will engage in the recovery of metals from Liquid and Solid Concentrates.
 - d. "Applicants" shall mean Applicant Envirite and Applicant AJYL.
 - e. "AJYL Facility" shall mean the metal reclamation facility located at 1533 Allen Avenue SE, Canton, Ohio 44707.
 - f. "Envirite Facility" shall mean Envirite of Ohio (Envirite) located at 2050 Central Avenue SE, Canton Ohio 44707.
 - g. "Facilities" shall mean Envirite Facility and AJYL Facility.
 - h. "Solid Concentrate" shall mean the metal-bearing solids generated in whole or in part from the treatment of hazardous wastes at Applicant Envirite's facility that would otherwise be defined as a hazardous waste when reclaimed.
 - i. "Liquid Concentrate" shall mean the metal-bearing liquid generated from the treatment of hazardous wastes at Applicant Envirite's facility that would otherwise be defined as a hazardous waste when reclaimed.
 - j. "Emergency Spill" is defined as any on-site release to the land, air or water of Solid or Liquid Concentrate that could result in or pose an imminent danger which requires prompt action to mitigate or minimize the

impact of the incident on human health or the environment; or any release that the Applicants are required to report to Ohio EPA's Emergency Response Section or the National Response Center.

- k. "Incidental Spill" is an unintentional release to the land, air or water of Solid or Liquid Concentrate that may occur during routine handling which does not pose an imminent danger to human health and the environment.
- l. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.
- m. "Paragraph" shall mean a portion of this Variance identified by an Arabic numeral or an upper or lower case letter.
- n. "Parties" shall mean Ohio EPA, Applicant Envirite and Applicant AJYL.
- o. "Section" shall mean a portion of this Variance identified by a Roman numeral.

IV. FINDINGS OF FACT & CONCLUSIONS OF LAW

1. Applicants are part of AJYL Holdings, LLC, which operates hazardous waste treatment and recycling facilities. Applicant Envirite wholly owns Applicant AJYL.
2. Applicant Envirite's primary business is the treatment and/or recycling of metal-bearing, inorganic hazardous wastes. The facility consists of a commercial wastewater treatment plant regulated under the Clean Water Act and a hazardous waste storage and treatment facility operating under a Federal RCRA Part B Permit and an Ohio Hazardous Waste Operating Permit.
3. Applicant Envirite was issued a hazardous waste treatment and storage permit on January 15, 2003.
4. Applicant AJYL notified Ohio EPA on February 28, 2008, in accordance with applicable rules of activity as a universal waste handler and used oil transfer facility.

5. Applicant Envirite's suppliers of metal-bearing hazardous wastes (i.e., generators and transporters) are required to manage and transport the hazardous wastes according to applicable hazardous waste requirements.
6. Applicant Envirite will reclaim metal-bearing hazardous wastes using physical/chemical separation and digestion technologies capable of converting and concentrating the metals contained in the received hazardous wastes into liquids and solids. Applicant Envirite will produce Liquid Concentrate and Solid Concentrate containing recoverable levels of copper, chromium, cobalt, nickel, tin, zinc or precious metals.
7. The Liquid and Solid Concentrates will be further reclaimed by Applicant AJYL to produce raw material substitutes for primary and secondary smelters, smelter feedstock producers, electrolytic refining facilities and chemical manufacturers.
8. Applicant AJYL will use a noncontact convection drier to process the Solid Concentrate. The processed concentrate will be sold for its metal values to primary and secondary smelters, and smelter feedstock producers.
9. Applicant AJYL will further reclaim the Liquid Concentrate by electrowinning to produce an extremely pure metal product acceptable for sale to the metals market; sell the processed Liquid Concentrate to other electrolytic refining facilities; or sell the processed Liquid Concentrate for use in chemical manufacturing. The extraction solutions from which metals are removed by electrowinning are reused in the metal digestion process at Envirite and AJYL.
10. Applicant AJYL maintains site security, facility inspection schedules, spill response plan, emergency equipment and secondary containment for tanks and containers.
11. All staff working at Applicant AJYL are Applicant Envirite employees and have received RCRA hazardous waste training as required under Applicant Envirite's hazardous waste permit.
12. On December 22, 2008, Applicants submitted an application for a variance from classification as a waste under OAC rule 3745-50-24(C) for metal-bearing Liquid and Solid Concentrates that are further reclaimed to produce high purity metal and feedstock for primary and secondary smelters and electrolytic facilities.

13. Based upon the information submitted by the Applicants in the Application and information contained in Applicant Envirite's hazardous waste treatment and storage permit and permit application, the Director finds that the Liquid and Solid Concentrates produced by Applicant Envirite are not wastes provided the conditions of this Variance are satisfied.
14. The Application addresses the standards and criteria set forth in OAC rule 3745-50-24(C) for issuing a variance from classification as a waste in the following manner:
 - a. **The degree of processing the Solid Concentrate and the Liquid Concentrate has undergone and the degree of further processing that is required.**

The input materials used by Applicant Envirite to produce the Liquid and Solid Concentrates are primarily inorganic metal-bearing hazardous wastes. Candidate hazardous wastes contain concentrations of metals that can be made amenable for recovery. Applicant Envirite converts and concentrates candidate metal-bearing wastes using physical/chemical separation and digestion technologies. This initial degree of processing is substantial and the resultant material is more commodity-like. The Liquid and Solid Concentrates produced by Applicant Envirite are sent to Applicant AJYL for further reclamation.

At Applicant AJYL, the Solid Concentrates are further reclaimed by convection drying and blended to produce a product which is sold as a substitute for ore concentrate and further reclaimed by the mineral processing industry. The Liquid Concentrate is reclaimed by Applicant AJYL using electrowinning to produce a high purity metal product which is sold to the metals market.

- b. **The value of the Liquid and Solid Concentrates after reclamation and the degree to which the Concentrates are like analogous raw material.**

Table 1, below, provides a comparison summary of the metal content of mined ore reserves and Applicant Envirite's Liquid and Solid Concentrates. As such, the Director finds the Applicant Envirite's reclaimed Solid and Liquid Concentrates to be of value because of the

available metal content. Likewise, the Director has determined that the metal content of the Liquid and Metal Concentrates compares favorably on a metal-to-metal percent by weight basis with mined ore reserves and that therefore the Concentrates are analogous to these commodities and readily useable as a raw material from which metals are reclaimed.

Table 1: Comparison of metal content of mined ores and Liquid and Solid Concentrates

Element	Ore Reserve		Concentrate	
	Grade Percent by weight	Source	Liquid Percent by Volume	Solid Percent by weight
Copper	0.4 – 3.0	Chile, USA, Canada, Japan, Russia, Zambia, Zaire	0.01-2.0(electroless) 3.0.-10.0 (electrolytic)	5.0 – 40.0
Nickel	0.1 – 2.0	Canada, Finland, Russia, Indonesia, New Caledonia	0.01-2.0(electroless) 3.0.-10.0 (electrolytic)	3.0 – 40.0
Tin	0.5 – 3.0	Malaysia, Bolivia, Indonesia, Thailand, UK	3.0 – 10.(electrolytic)	3.0 – 40.0
Zinc	5.0 – 15.0	Canada, USA, Australia, Peru, Japan, Italy	Not applicable	2.0 – 40.0
Chromium	Not provided	Not provided	Not applicable	2.0
Cobalt	Not provided	Not provided	Not applicable	2.0

Source: Envirite Application Table 1 and Table 2

c. The extent to which an end market for the Liquid and Solid Concentrates is guaranteed.

An end market for the Liquid and Solid Concentrates is guaranteed because the Applicant Envirite's wholly owned company, Applicant AJYL, is specifically designed and dedicated to further reclaim Liquid and Solid Concentrates. Applicant AJYL's products are high purity base metals acceptable for use in the metals market and metal concentrates acceptable as an ore substitute in the smelting industry.

In addition, the Liquid Concentrate is suitable for use by chemical manufacturers that use metal-bearing materials to make a variety of products such as paint pigments and metal catalysts.

d. **The extent to which the Liquid and Solid Concentrates are handled to minimize loss**

All materials received by Applicant Envirite for recycling will be managed in tanks and containers, and in compliance with Applicant Envirite's hazardous waste treatment and storage permit and City of Canton, industrial waste discharge permit. As an existing permitted facility, Applicant Envirite has developed an agency approved Waste Analysis Plan, Facility and Equipment Inspection Program, a Contingency/Preparedness/Spill Prevention Plan and a Health and Safety Program. Applicant's Health and Safety Program is officially extended to all Applicant AJYL operations. In addition, Applicant AJYL maintains site security, facility inspections schedule, spill response plan, emergency equipment and secondary containment for tanks and container storage areas.

V. GENERAL CONDITIONS

1. All activities undertaken by the Applicants pursuant to this Variance shall be performed in accordance with the requirements of all applicable federal, state and local laws, rules, ordinances and the Application.
2. Applicant Envirite shall construct, operate, repair, improve and maintain all of the equipment and parts of the facility associated with the reclamation of hazardous wastes according to the conditions of Applicant Envirite's hazardous waste treatment and storage permit. In addition, Applicants shall comply with the following specific conditions for Liquid and Solid Concentrates:
 - a. **Liquid and Solid Concentrate:** Applicant Envirite's Liquid and Solid Concentrates destined for reclamation shall meet or exceed the concentrations for at least one of the following metals:

Solid Concentrate:

Tin: 3 percent, or
Nickel: 3 percent, or

Copper: 5 percent, or
Cobalt: 2 percent, or
Zinc: 2 percent, or
Chromium: 2 percent

Liquid Concentrate (Electrolytic):

Tin: 3 percent, or
Nickel: 3 percent, or
Copper: 3 percent

Liquid Concentrate (Electroless):

Nickel: .01 percent, or
Copper: .01 percent

- b. **Further Reclamation:** Applicant Envirite shall only send Liquid and Solid Concentrates to Applicant AJYL for further reclamation.
- c. **Storage:**
 - i. Applicants shall only store Liquid and Solid Concentrates at the Facilities in tanks or containers. Tanks and containers used to store Liquid and Solid Concentrates shall be nonleaking and compatible with the Liquid and Solid Concentrates. All containers of Liquid and Solid Concentrates must be labeled with a readable lot number, reference number, barcode or other tracking method that identifies the material and profile information form.
 - ii. Applicant AJYL shall not store Liquid Concentrate or Solid Concentrate in quantities greater than the quantities used to calculate the cost estimate required in Section V.2.q. of this Variance.
- d. **Engineering Controls:** Applicants shall use engineering controls (e.g., enclosed conveying systems, loading/unloading ports, enclosed transport vehicles, emissions control systems) and/or implement procedures at the Facilities to minimize the release of Liquid and Solid Concentrates during loading, unloading, conveying operations and storage.

- e. **Emergency Spill:** Applicants shall:
 - i. Document the occurrence of an Emergency Spill, fire or explosion involving Liquid or Solid Concentrates requiring implementation of an emergency response plan and describe the cause of the emergency situation and the action taken. The Applicants shall submit the documentation to the agency according to Section XI and retain the documentation on-site at the respective facility for three years.
 - ii. Determine whether cleanup residuals from Emergency Spills destined for disposal meet the definition of a characteristic hazardous waste and/or are defined as a listed hazardous waste, pursuant to OAC rule 3745-51-03. Cleanup residuals meeting the definition of a hazardous waste shall be managed according to ORC Chapter 3734 and the hazardous waste management rules promulgated there under.
- f. **Incidental Spill:** Applicants shall clean up Incidental Spills of Liquid and Solid Concentrates in a timely manner. Applicants shall determine whether cleanup residuals from Incidental Spills destined for disposal meet the definition of a characteristic hazardous waste and/or are defined as a listed hazardous waste pursuant to OAC rule 3745-51-03. Cleanup residuals meeting the definition of a hazardous waste shall be managed according to ORC Chapter 3734 and the hazardous waste management rules promulgated there under.
- g. **Inspections - Envirite:** Applicant Envirite shall inspect the Liquid and Solid Concentrate storage units, storage areas and management areas on a weekly basis. Each unit and area shall be inspected for leakage, spillage, structural failure and structural damage. Each inspection shall be recorded and retained on-site at the facility for three years.
- h. **Inspections- AJYL:** Applicant AJYL shall inspect its facility according to the frequency given in the Section 4.2 of Applicant AJYL's procedures manual. Each inspection shall be recorded and retained on-site at the facility for three years.
- i. **Equipment:** Applicants shall maintain in good working order the equipment used to handle, store, convey and contain Liquid and Solid

Concentrates. The equipment may include but is not limited to: tanks, containers (including transport vehicles), secondary containment systems, loading and unloading areas, sumps, piping and conveyance systems.

- j. **Recordkeeping - Envirite:** Applicant Envirite shall record volume or amount of Liquid and Solid Concentrates sent to Applicant AJYL for further reclamation, and a description and amount of each type of hazardous waste reclaimed by the Applicant Envirite. This recordkeeping shall be done for three consecutive years and all records shall be kept until December 31, 2015.
- k. **Recordkeeping - AJYL:** Applicant AJYL shall record the amount of metals reclaimed from Liquid Concentrates, the amount of reclaimed Solid Concentrate product sent for further reclamation and the name of the company that bought the Solid Concentrate for further reclamation. This recordkeeping shall be done for three consecutive years and all records shall be kept until December 31, 2015.
- l. **Reporting:** Applicants shall report the information required in Section V.2.j. and Section V.2.k., respectively, of this Variance, to Ohio EPA according to Section XI of this Variance for the previous calendar year by March 1st of each year. The first report will be due March 1, 2010. The information requested may be reported in a format of the Applicants' choice.
- m. **Speculative Accumulation:** Applicants shall not speculatively accumulate Liquid or Solid Concentrates. A material is not accumulated speculatively if it is demonstrable that the material is potentially recyclable or saleable and has a feasible means of being recycled or sold, and that during the calendar year, commencing January 1st, the amount of material that is sold, recycled, or transferred to a different site for recycling equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year.
- n. **Termination:** This Variance shall be terminated when any of the following events occur:

- i. Applicant Envirite no longer operates the Envirite Facility.
- ii. Applicant Envirite no longer engages in the reclamation of metals from hazardous wastes at the Envirite Facility.
- iii. Applicant AJYL is no longer a wholly owned Applicant Envirite company.
- iv. The Variance terminates pursuant to Section X of this Variance.
- o. **Notice:** Applicants shall provide a written notice to Ohio EPA, in accordance with Section XI of this Variance, within seven days after the date of the events described in Section V, paragraphs 2.n.i. through 2.n.iv, of this Variance occur.
- p. **Financial Assurance Mechanism:** Applicant AJYL shall at least 30 days prior to accepting Liquid and Solid Concentrates establish financial assurance in compliance with OAC rule 3745-55-43 and provide to Ohio EPA documentation of financial assurance which meets the wording requirements of OAC rule 3745-55-51, in at least the amount of the estimate, according to Section V.2.q. of this Variance, to remove Liquid and Solid Concentrates and decontaminate the units and areas used to store Liquid and Solid Concentrates. Applicant AJYL shall maintain continuous compliance with Section V.2.p. of this Variance and OAC rules 3745-55-43 and 3745-55-51 throughout the term of this Variance.
- q. **Cost Estimate:** Applicant AJYL must submit a detailed written estimate, according to Attachment A of this Variance, of the cost of removing any Liquid and Solid Concentrates and decontaminating the units and areas used to store Liquid and Solid Concentrates.

Note: For the purposes of complying with the financial assurance and cost estimate conditions of this Variance, the following terms shall be read in OAC rules 3745-55-43 and 3745-55-51 as defined below:

- i. "Closure" shall mean "removal and decontamination;"
- ii. "Hazardous waste" shall mean "Liquid and Solid Concentrate;"

- iii. "Owner/operator" shall mean "Applicant AJYL;" and,
 - iv. "Facility" shall mean "AJYL Facility."
- r. **Removal and Remediation Plan:** Within 60 days after the date any of the events described in Section V, paragraphs 2.n.i. through 2.n.iv. or Section XIV of this Variance occur, Applicants shall prepare and submit to Ohio EPA, a Removal and Remediation Plan (RRP). The plan details the events the Applicants will take to remove and properly recycle or dispose of Liquid and Solid Concentrate; and properly decontaminate areas and units used to manage and store Liquid and Solid Concentrates.
- i. The RRP must be sent to Ohio EPA in accordance with Section XI of this Variance. The RRP is subject to Ohio EPA approval. Ohio EPA will notify Applicants, in writing, whether or not it approves of Applicants' RRP. If the RRP is not approved, Ohio EPA will identify the deficiencies or problems in the RRP, in writing. Applicants shall revise the RRP, or submit a new RRP, based on the findings and deficiencies noted in Ohio EPA's statement. At Applicants' request, Ohio EPA agrees to meet and discuss its findings and deficiencies prior to Applicants submitting the revised RRP. The revised or new RRP must be submitted to Ohio EPA for approval within 30 days of receipt of the written statement of deficiencies or problems. If Ohio EPA modifies the unapproved RRP, the modified RRP becomes the approved RRP.
 - ii. Upon approval of the RRP, Applicants shall implement the approved RRP in accordance with the specifications and schedule in the approved RRP.
 - iii. Within 60 days after completion of work required by the approved RRP, Applicants shall submit to Ohio EPA, for review and approval, a certification that the work was conducted in accordance with the approved RRP. The certification must be signed by the Applicants. The signed certification must be submitted to Ohio EPA, in accordance with Section XI of this Variance. Ohio EPA retains the right to inspect the Facility and take samples, photographs and notes, access process records, logs, invoices, analytical data, etc, prior to, during, and subsequent to certification of the RRP. If, after

inspection and review of the facility to which the RRP applies, Ohio EPA does not conclude that the facility meets the conditions of the certified RRP, it shall deem the "certified" RRP invalid and cleanup of the facility inadequate.

- iv. If Ohio EPA deems the certified RRP invalid, Applicants shall prepare and submit a revised RRP to Ohio EPA, within 60 days, indicating how it intends to correct the deficiencies or problems. Upon receipt of approval of the revised RRP, Applicants shall, within 45 days, implement the revised RRP and submit a signed, revised certification of cleanup to Ohio EPA. As illustrated in Sections VI and VII, of this Variance, Ohio EPA retains the right to inspect the Facilities and Applicants' records to ascertain whether or not the facility has satisfactorily been cleaned up.

VI. ACCESS TO INFORMATION

Applicants shall provide Ohio EPA, upon request and within a reasonable time frame, copies of all information relating to this Variance within its respective possession or control, or within the possession or control of its respective contractors or agents, including but not limited to documents and information related to the issuance, use and implementation of this Variance.

Applicants may assert a claim that documents and other information submitted to Ohio EPA pursuant to this Variance are confidential under the provisions of OAC rule 3745-50-30. If no such claim of confidentiality accompanies the documents and other information when submitted to Ohio EPA, the documents and other information may be made available to the public without notice to Applicant.

Nothing in this Section shall be construed as in any way limiting Ohio EPA's access, inspection and information gathering rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation.

VII. ACCESS TO SITE

Applicants shall provide Ohio EPA with access, at all reasonable times, including during normal business hours, to the Facilities. Access under this Variance shall be for the

purpose of conducting any activity related to this Variance or Ohio EPA's regulatory responsibilities, including but not limited to, the following:

1. Monitoring the implementation or use of this Variance;
2. Conducting sampling;
3. Inspecting and copying records, contracts, and other documents and information related to the implementation or use of this Variance; and,
4. Verifying any data and other information submitted to Ohio EPA.

Nothing in this Section shall be construed as in any way limiting Ohio EPA's access, inspection and information gathering rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation.

VIII. OTHER APPLICABLE LAWS

All actions taken pursuant to this Variance shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. This Variance does not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to the Applicants.

IX. RESERVATION OF APPLICABLE LAWS

Ohio EPA reserves the right to take any action, including but not limited to, the right to revoke, seek injunctive relief, recover costs, pursue civil penalties, seek criminal penalties, or undertake any removal, remedial or response action, pursuant to any available legal authority as a result of past, present or future violations of state or federal laws or regulations, or the common law, arising from events or conditions related to the AJYL or Envirite Facility. Notwithstanding any provision of this Variance, the State of Ohio retains all of its access, inspection and information gathering rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation.

X. REVOCATION

The following are causes for revoking a Variance during its term:

1. Noncompliance by the Applicants with any condition of the Variance;
2. The Applicants' failure in the Application or during the Variance issuance process to disclose fully all relevant facts, or the Applicants' misrepresentation of any relevant facts at any time; or,
3. A determination by the Director that the AJYL or Envirite Facility is operated in a manner that endangers human health or the environment.

XI. NOTICE

Annual reports and other information required to be submitted to Ohio EPA pursuant to this Variance shall be sent to the following addresses:

For mailings:

Ohio Environmental Protection Agency
Northeast District Office
Division of Hazardous Waste Management
2110 Aurora Road
Twinsburg, Ohio 44087

and Ohio EPA Central Office at the following addresses:

For mailings, use the post office box number:

Ohio Environmental Protection Agency
Division of Hazardous Waste Management
Regulatory Services Unit
Lazarus Government Center
P. O. Box 1049
Columbus, Ohio 43216-1049

For deliveries to the building and courier services:

Ohio Environmental Protection Agency
Division of Hazardous Waste Management
Regulatory Services Unit
Lazarus Government Center
50 West Town Street
Columbus, Ohio 43215

XII. MODIFICATION

This Variance may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

1. Applicants shall submit a written request to modify this Variance to the Director.
2. The Director will consider the request and either grant or deny the request for modification.
3. The Director shall public notice his decision to grant or deny the request for modification as a final action.

XIII. VARIANCE RENEWALS

In the event that this Variance expires prior to a final action of the Director to renew or reissue this Variance, the Applicants may continue to operate in accordance with the terms and conditions of the expired variance until a new variance is issued or denied provided that:

1. The Applicants submit a complete application for a renewal variance at least one hundred eighty days before the expiration date of this Variance unless permission for a later submittal date has been authorized by the Director prior to the expiration date of this Variance, and;
2. Through no fault of the Applicants a new variance has not been issued pursuant to OAC rule 3745-50-23 on or before the expiration date of the previous variance.

XIV. EFFECTIVE PERIOD

Unless otherwise revoked by the Director or terminated under Section V., paragraph 2.n., this Variance shall terminate ten years after the effective date of this Variance. An application for a renewal, meeting the requirements of OAC rule 3745-50-23, may be submitted to the Director in accordance with Section XIII. This Variance may be reviewed by the Director at any time and shall be modified in accordance with Section XII of this Variance, as necessary.

XV. WAIVER

Applicants consent to the issuance of this Variance and agree to comply with the terms and conditions of this Variance.

Applicants hereby waive the right to appeal the issuance, terms and conditions, and service of this Variance and Applicants hereby waive any and all rights Applicants may have to seek administrative or judicial review of this Variance either in law or equity.

Notwithstanding the preceding, Ohio EPA and Applicants agree that if this Variance is appealed by any other party to the Environmental Review Appeals Commission, or any court, Applicants retain the right to intervene and participate in such appeal. In such an event, Applicants shall continue to comply with the terms and conditions of this Variance notwithstanding such appeal and intervention unless this Variance is stayed, vacated or modified.

IT IS SO DECIDED AND AGREED:

Envirite of Ohio, Inc.


By _____
President
Title

5/28/09
Date

AJYL Recovery Services, LLC.


By _____
President
Title

5/28/09
Date

Ohio Environmental Protection Agency


Chris Korleski
Director

6/11/09
Date

ATTACHMENT A

Financial Requirements for AJYL

Cost estimate.

- (a) The Applicant AJYL must have a detailed written estimate, in current dollars, of the cost of disposing of Liquid and Solid Concentrates as listed or characteristic hazardous waste, and the cost of decontaminating the units and areas where the Liquid and Solid Concentrates were stored.
- (1) The estimate must equal the cost of conducting the activities described in paragraph (a) of this section at the point when the extent and manner of AJYL Facility's operation would make these activities the most expensive; and
 - (2) The cost estimate must be based on the costs to the Applicant AJYL of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the Applicant AJYL.
 - (3) The cost estimate may not incorporate any salvage value that may be realized with the sale of the Liquid and Solid Concentrates, facility structures or equipment, land, or other assets associated with the AJYL Facility.
 - (4) The Applicant AJYL may not incorporate a zero cost for Liquid and Solid Concentrates that might have economic value.
- (b) During the active life of the AJYL Facility, the Applicant AJYL must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with OAC rule 3745-55-43. For owners and operators using the financial test or corporate guarantee, the cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the director as specified in OAC rule 3745-55-43(F)(3). The adjustment may be made by recalculating the cost estimate 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, as specified in paragraphs (b) (1) and (2) of this Attachment. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.
- (1) The first adjustment is made by multiplying the cost estimate by the inflation factor. The result is the adjusted cost estimate.
 - (2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.
- (c) During the active life of the AJYL Facility, the Applicant AJYL must revise the cost estimate no later than 30 days after a change in a AJYL Facility's operating plan or design that would increase the costs of conducting the activities described in paragraph (a) or no later than 60 days after an unexpected event which increases the cost of conducting the activities described in paragraph (a) of this section. The revised cost estimate must be adjusted for inflation as specified in paragraph (b) of this section.
- (d) The Applicant AJYL must keep the following at the AJYL Facility during the operating life of the AJYL facility: The latest cost estimate prepared in accordance with paragraphs (a) and (c) and, when this estimate has been adjusted in accordance with paragraph (b), the latest adjusted cost estimate.