

OSWER POLICY DIRECTIVE #9477.00-5

RISK RETENTION GROUPS AND FINANCIAL ASSURANCE

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

NOV 23 1987

MEMORANDUM

SUBJECT: Risk Retention Groups and Financial Assurance

FROM: Marcia E. Williams, Director  
Office of Solid Waste (WH-562)

TO: Waste Management Division Directors, Regions I-X

Attached for your information is a letter from Bruce Weddle, Director of the Permits and State Programs Division, to Harry Shuford of the Environmental Protection Insurance Company confirming that risk retention groups may qualify to issue liability insurance policies under RCRA regulations. As the letter states, policies issued by risk retention groups would satisfy the RCRA requirements if the group was licensed to transact business in one or more states, and if the policy otherwise met the RCRA financial assurance requirements.

Because the question of whether policies issued by risk retention groups can be used to satisfy RCRA financial assurance requirements has been raised in a number of states, I ask that you forward this letter to the RCRA financial assurance contacts in each of your states.

If you have any questions on this letter please contact Matt Hale (382-4740) or Margaret Schneider (382-4696) of my staff.

Attachment

cc: Gene Lucero

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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

NOV 10 1987

Harry Shuford  
Environmental Protection Insurance Company  
220 E. 42nd Street, Suite 500  
New York, NY 10017

Dear Mr. Shuford:

I am writing you, at Robert F. Schiff's request, in response to Mr. Schiff's letter of November 2, 1987 to the EPA Office of Solid Waste. In his inquiry, Mr. Schiff sought our view of whether the Resource Conservation and Recovery Act (RCRA) requirements that hazardous waste management facilities demonstrate financial assurance for liability can be satisfied by a policy issued by a risk retention group.

The RCRA regulations at 40 CFR Subpart H require, in part, that to satisfy the financial assurance requirements an insurance policy must be issued by an insurer licensed to transact business in one or more states. (40 CFR 264.147(a)(1)(ii), (b)(1)(ii) and 265.147(a)(1)(ii), (b)(1)(ii)). A risk retention group which meets the requirements of the Risk Retention Act of 1986 and which is licensed to transact the business of insurance in at least one state would satisfy this regulatory requirement. Your letter indicates that the Environmental Protection Insurance Company (EPIC) has met these conditions. Accordingly, policies issued by EPIC in conformance with all other requirements of Subpart H could be used to satisfy the Federal RCRA requirements for liability coverage, or the requirements of an authorized state that adopted the Federal regulatory language.

I should add, however, that compliance with Federal requirements may not be sufficient to fulfill state requirements. State RCRA requirements may be more stringent than the Federal requirements. In states authorized to

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administer the RCRA program, therefore, state regulations must be examined to determine whether your specific mechanism satisfies the RCRA financial assurance requirements and is otherwise consistent with state law.

Sincerely,

Original Document signed

Bruce R. Weddle  
Director  
Permits and State Division

cc: Robert F. Schiff  
RCRA Waste Management Division Directors, Region I-X

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WELLFORD, WEGMAN & HOFF  
1701 Pennsylvania Avenue, N.W.  
Suite 1000  
Washington, D.C. 20006  
(202) 775-0200

November 2, 1987

VIA HAND DELIVERY

Mr. Matthew Hale  
Chief, Permits Branch  
Office of Solid Waste  
Environmental Protection Agency  
Room 2818 J, 401 M Street, S.W.  
Washington, D.C. 20460

Re: Environmental Protection Insurance Company--Risk  
Retention Group ("EPIC")

Dear Mr. Hale:

Following our telephone discussion, I am writing to request your opinion that the Environmental Protection Insurance Company ("EPIC") qualifies under federal regulations to provide Resource Conservation and Recovery Act ("RCRA") insurance.

As you know, EPIC is in the final stages of raising the necessary capital to begin operations. In order to assure potential investors that an EPIC policy will allow them to satisfy state financial responsibility requirements, EPIC is now discussing those requirements with individual state environmental regulators. A concern sometimes raised in these discussions is whether EPA's regulations under RCRA can be satisfied by a policy issued by a risk retention group such as EPIC. Of particular relevance are the regulations located at 40 C.F.R. §§ 264.147(a)(1)(ii), (b)(1)(ii) and 265(a)(1)(ii), (b)(1)(ii).

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EPIC is licensed as an insurance carrier in the state of Illinois. Pursuant to the Liability Risk Retention Act of 1986, it has filed as a risk retention group in all 50 states. EPIC intends to comply with all RCRA regulations for liability coverage.

Based on the foregoing, please inform us whether, in EPA's view, EPIC can provide RCRA insurance to hazardous waste facility owners and operators. We would appreciate your transmitting your response to the appropriate EPA Regional offices, and through them to state representatives.

Thank you for your prompt attention to this matter.

Sincerely,

Original Document signed

Robert F. Schiff