

## **MEMORANDUM**

**SUBJECT:** File Management for RCRA Financial Assurance

**FROM:** Matthew Hale, Director  
Office of Solid Waste

**TO:** RCRA Waste Management Division Directors  
Regions 1-10

### **Purpose**

This memorandum is being transmitted to remind you of the importance of having a file management system in place for RCRA Subtitle C financial assurance documentation. As you know, most financial assurance requirements are now imposed by authorized states. Therefore, we have worked with states in the development of this guidance, and I am providing a copy to states through ASTSWMO.

### **Background**

Financial assurance is an integral component of the RCRA hazardous waste program. It provides assurance to EPA and the States that resources will be available for closure, post-closure care and corrective action at treatment, storage and disposal facilities to protect human health and the environment if the facility owner or operator proves unable to perform these activities, and serves as an incentive for responsible management of hazardous waste. In addition, financial assurance provides third party liability coverage for accidental occurrences arising from the facility's operations.

We believe that it is important for EPA and the States to have a financial document management system designed to support the efficient identification of important financial assurance documents. The EPA Regions and States should also have a document management system that safeguards financial instruments. Some financial instruments are issued by a financial institution with EPA Regional Administrators (RA) or State Directors as the beneficiary. When a facility defaults on its work obligations under such an instrument, for example, the RA or Director may then redeem the financial instrument to secure the funds designated for completing closure, post closure, and/or cleanup. In order to draw upon certain

instruments, the original instrument may need to be produced. Therefore, proper record management for these instruments is of utmost importance.

### Financial Assurance File Management

Organized facility financial information helps ensure that regulators have the ability to quickly access financial assurance information for a particular RCRA facility and to determine whether a facility is in compliance with financial assurance regulations. It also assists regulators to quickly take appropriate action in the event of developments such as notice of policy cancellation or facility bankruptcy. Components of a well organized financial assurance file management system include:

- **Financial Assurance Checklist:** Use of a financial assurance checklist can support the assessment of the facility's financial assurance status. A checklist can provide the regulator with a quick way to verify that the financial assurance file system contains the relevant documents (the facility's closure plan, the facility's most recent inflation adjusted cost estimates, and a copy of the facility's current financial assurance instrument), and to indicate the location of original documents which may be in secure storage, as explained below.
- **Closure/Post-Closure Plans:** The facility's approved closure/post-closure plans can help benchmark the financial assurance instrument against the company's cost estimate and RCRA responsibilities. (Note that closure/post-closure plans have typically been approved in the case of permitted facilities.)
- **Cost Estimate Updates:** Accurate and up-to-date cost estimates are important to ensure adequate funding for closure and post-closure activities. The facility's most recent (inflation adjusted) cost estimates should be accessible.
- **Financial Assurance Instrument:** The most important document is the financial instrument itself. In the case of negotiable financial instruments, such as Letters of Credit and documents such as Trust Fund Agreements, the original instrument, including all attachments, should be kept in a fire-proof safe. This is because the original document is required to be presented in order to draw upon the instrument. Some Regions and States are also keeping surety bonds, insurance certificates and guarantees in fire-proof safes. The financial institution that issues the instrument may have special requirements regarding surrender of the instrument in order to draw upon it. Any instructions from the financial institution should be kept in the financial assurance file. The financial institutions instructions may also affect your decision on where to keep the financial instrument. In any case, a copy of the instrument should be kept in the financial assurance file, with an indication of the location of the original instrument.

### Summary

A well-organized file management system will help you better manage financial assurance information. It will help you recognize when cost estimates and financial instruments need to be updated to keep current with revisions to closure/post-closure plans, and to draw on the instruments when needed. Organized and accessible financial assurance files also help ensure the adequacy of a facility's RCRA Subtitle C financial obligations, and will help in your future efforts to provide current financial assurance information for RCRAInfo Version 4 when it becomes available.

For Further Information

Thank you for your efforts to ensure that RCRA hazardous waste facilities meet their financial responsibility requirements. If you have any specific questions about the file management aspects of the memorandum, please contact Vernon Myers at (703) 308-8660.

cc: Dania Rodriguez, ASTSWMO