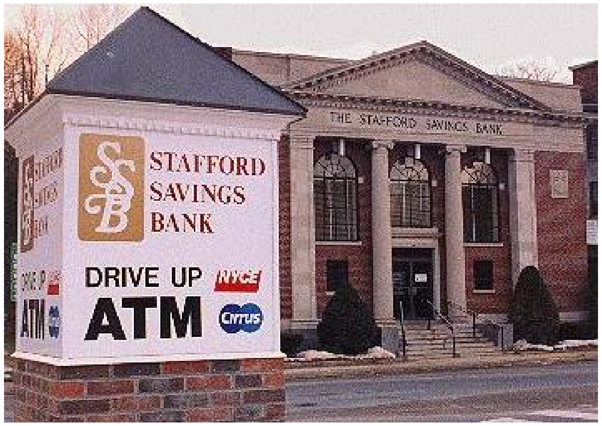
SESSION 23

RCRA FINANCIAL ASSURANCE:

MECHANISMS FOR FINANCIAL ASSURANCE

TSDFs must use one of these six financial assurance mechanisms

- Trust Fund
- Surety Bond
- Letter of Credit
- Insurance
- Financial Test and Corporate Guarantee
- Combinations



40 CFR §§264.143(a)-(f) and §§264.145(a)-(f)

TSDFs may satisfy financial assurance requirements by establishing a closure trust fund

- A trust fund allows an owner or operator to set aside money in increments according to a phase-in schedule (known as the pay-in period)
- At the end of the pay-in period, the facility will have enough money set aside to cover its financial assurance costs, and will have funds specifically earmarked for closure, post-closure care, and liability requirements

40 CFR §264.143(a); §264.145(a); §264.151(a)

A trust fund allows TSDFs to set aside money for closure

- Annual payments during pay-in period
- Payment amount determined by using specific formula
- Amounts updated annually based on most current cost estimate
- After pay-in period, possible rebate or additional payment

40 CFR §264.143(a); §264.145(a); §264.151(a)

TSDFs may satisfy financial assurance requirements by obtaining a surety bond

- A surety bond is a guarantee by a surety company that the owner's or operator's financial assurance obligations will be fulfilled

- If the owner or operator fails to pay or perform as specified in the bond, the surety company will become liable

40 CFR §§264.143(b) & (c); §§264.145(b) & (c); §264.151(b)

Surety bonds are guarantees by third parties to pay or perform closure

- Contract or agreement where a third party agrees to front money for, or perform closure/post-closure
- Owner and operator must repay the surety company
- Interim status facilities may not use performance surety bonds

40 CFR §264.143(b) & (c); §264.145(b) & (c); §264.151(b)

TSDFs may satisfy financial assurance requirements by obtaining a letter of credit

- A letter of credit is a guarantee by a financial institution that covers the owner's or operator's closure or post-closure care obligations
- The appropriate agency may draw on the letter of credit if the owner or operator fails to perform

40 CFR §264.143(d); §264.145(d); §264.151(d)

A letter of credit is a commitment by a financial institution to cover closure costs

- Contract between the owner/operator, issuer (usually a bank), and EPA
- Must be irrevocable and issued for at least one year
- A company's credit history is taken into account by the issuing bank, as collateral may be required

40 CFR §264.143(d); §264.145(d); §264.151(d)

TSDFs may satisfy financial assurance requirements by obtaining closure insurance

- Closure insurance guarantees that funds will be available for closure or post-closure care in the event that the owner or operator fails to perform

- Once closure or post-closure care begins, the insurer will be responsible for paying out funds, up to the face value of the policy, as directed by the appropriate agency

40 CFR §264.143(e); §264.145(e); §264.151(e)

Insurance can be purchased to guarantee that funds will be available for closure

- Policy must be issued for face amount
- Policy must allow assignment to successor owner and operator
- Insurer may cancel, terminate, or decide not to renew the policy ONLY if the owner and operator fails to pay the premium

40 CFR §264.143(e); §264.145(e); §264.151(e)

TSDFs may satisfy financial assurance requirements by passing a financial test

- An owner or operator with the financial assets to absorb the costs of closure, post-closure care, and liability obligations may comply with financial assurance requirements by using the financial test

- EPA's regulations set out the criteria that an owner or operator must meet to pass the financial test

40 CFR §264.143(f); §264.145(f); §264.151

Facilities that meet financial test criteria satisfy financial assurance

- Satisfy financial ratios or have acceptable bond rating
- Have certain size relative to closure/post-closure responsibilities
- Have significant assets in the United States

40 CFR §264.143(f); §264.145(f); §264.151

TSDFs may pass the financial test by obtaining a corporate guarantee

- An owner or operator may arrange a corporate guarantee by demonstrating that its corporate parent, grandparent, or sibling, or other firm with which it has a substantial business relationship, meets the financial test requirements on the owner's or operator's behalf

- The corporate guarantor is required to perform closure or post-closure care, or to establish a trust fund, where the owner or operator fails to perform

40 CFR §264.143(f); §264.145(f); §264.151

Facilities may arrange a corporate guarantee to pass the financial test

- Guarantor must be either:
  - Parent corporation
  - Sibling corporation
  - Firm with "substantial business relationship" with owner and operator

- Guarantor must meet financial test requirements

Miscellaneous financial assurance provisions and allowances exist

- Mechanisms may be combined to cover costs - §264.143(g) & §264.145(g)
- One mechanism may be used for more than one facility - §264.143(h) & §264.145(h)
- Financial assurance is no longer required 60 days after closure or post-closure is certified - §264.143(i) & §264.145(i)
- State mechanisms allowed with Regional Administrator approval §264.149