

EXHIBIT B

Memorandum dated January 30, 2007 from Matthew Hale, Director of the Office of Solid Waste of the United States Environmental Protection Agency, to RCRA Waste Management Division Directors, Regions 1-10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JAN 30 2007

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Review of Financial Assurance Information When a RCRA Permit is Issued, Renewed, or Reviewed

FROM: Matthew Hale, Director
Office of Solid Waste

A handwritten signature in black ink, appearing to read "Matt Hale", written over the printed name and title.

TO: RCRA Waste Management Division Directors
Regions 1 - 10

Purpose

This memorandum is being transmitted to remind you of the importance of reviewing the cost estimates and financial assurance instruments for closure, post-closure care, and corrective action during permit issuance and permit renewal, and during the five-year permit review for land disposal permits.¹ I am also sharing a copy of this memorandum with the 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, if the facility owner or operator proves unable to perform those activities. In addition, financial assurance provides third-party liability coverage for accidental occurrences arising from the facility's operations. To effectively implement the financial assurance requirements, regulators must assure that the facility's cost estimates for closure, post-closure, and corrective action adequately reflect the costs associated with those activities, and that the facility's financial assurance instruments meet the regulatory requirements. Therefore, careful review of cost estimates and

¹ Though the purpose of this memorandum is to remind regulators that financial assurance information, including cost estimates, should be part of the information that is reviewed during these three permitting events, regulators should be mindful that it is important to maintain adequate financial assurance instruments and accurate cost estimates at permitted facilities throughout the permit term

financial assurance instruments is an important component of permit issuance and permit renewal, and of the five-year review of land disposal permits.²

Financial Assurance Information Review

Owners or operators submitting a new part B permit application, or seeking to renew their expiring RCRA permits, must submit a timely application under 40 CFR 270.14³ and the applicable sections in §§270.15 through 270.29. Paragraphs 270.14(b)(14)-(18) describe the information required to demonstrate financial assurance for closure, post closure, and third-party liability. In order to ensure that owners and operators provide adequate and effective financial assurance, Regions and States should carefully review facility cost estimates and financial assurance instruments during the permit application process for new or renewed permits, and for land disposal permits during the five-year review required under §270.50(d). The closure and post-closure reviews should focus on conformance with the requirements in Part 264 Subpart H. Sections 264.101(b) and (c) require financial assurance for corrective action. Where financial assurance mechanisms are in place for corrective action, or are needed, at the time of permit issuance, permit renewal, or five-year review, regulators should carefully review those cost-estimates and financial assurance instruments.

In many States, EPA or the State has already conducted a review of financial assurance instruments as part of the OECA financial assurance priority. In addition, some Regions and States have, or are, undertaking reviews of the cost estimates. These activities will help ensure that the cost estimates are adequate, and that the financial assurance instruments meet the regulatory requirements, and they fit well with the message in this memorandum.

Assistance to Regions and States

Within the next several months, OECA-led cost estimation training courses will have been provided on closure, post-closure, and corrective action in all of the Regions and in several States. Attendees at the course receive training in, and copies of, two cost estimation software programs. The first is CostPro, which has been an Agency standard for the estimation of closure and post-closure costs. The second is RACER, which has been developed for the U.S. Air Force to estimate costs related to site remediation (including RCRA corrective action). Other primary users of RACER include the Department of Energy and the Army Corps of Engineers. These tools will help regulators evaluate cost estimates provided by the facility owner or operator⁴.

² Regulators of course should recognize that effective financial assurance for closure, post-closure care, and corrective action activities conducted outside of a permit also depends on adequate cost-estimates and financial assurance instruments. The message in this memorandum is not meant to deemphasize attention to financial assurance at these facilities, but rather to stress the importance of careful review of financial assurance cost estimates and mechanisms at key steps in the permit process.

³ For facilities seeking a standardized permit, 40 CFR 270.275(h) requires the submission of a cost estimate and a copy of the documentation required under 40 CFR 267.143.

⁴ CostPro has been used by EPA and state regulators since 1996 to evaluate facility owners' and operators' estimates for closure and post-closure. RACER is primarily used for corrective action, although it can be adapted for closure and post-closure purposes.

In addition, the Agency has provided five four-day training sessions on financial assurance instruments, which many State and Regional employees have attended. The training provides information that should prove useful during review of financial assurance instruments. The next OECA-led training on the financial assurance instruments will be held in August 2007; notice of the training will be on the NETI website for registration.

These training initiatives are among several important tasks that the Agency outlined in the October 20, 2006 financial assurance strategy that was submitted to the Inspector General⁵. For example, as part of that strategy, the Agency committed to upgrading CostPro to make it compatible with newer versions of computer operating systems. That task is already underway. The Agency also committed to provide contractor support, on a pilot basis, to a limited number of Regions and States for review of financial assurance submissions. We expect that these efforts, and other initiatives outlined in the strategy, will assist you as you conduct these reviews.

For Further Information

Thank you for your efforts to ensure that RCRA hazardous waste facilities undergoing the permit process meet their financial responsibility requirements. If you have any specific questions about the closure and post-closure aspects of this memorandum, please contact Michael Galbraith at (703) 605-0567. If you have questions about the financial assurance for corrective action aspects, please contact Barbara Foster at (703) 308-7057.

cc: Howard Roitman, ASTSWMO

⁵ See memorandum entitled "Response to Recommendation 4.1 of the September 26, 2005 Office of Inspector General Evaluation Report entitled Continued EPA Leadership Will Support State Needs for Information and Guidance on RCRA Financial Assurance, October 20, 2006."