

RCRA Subpart H Financial Assurance: Overview

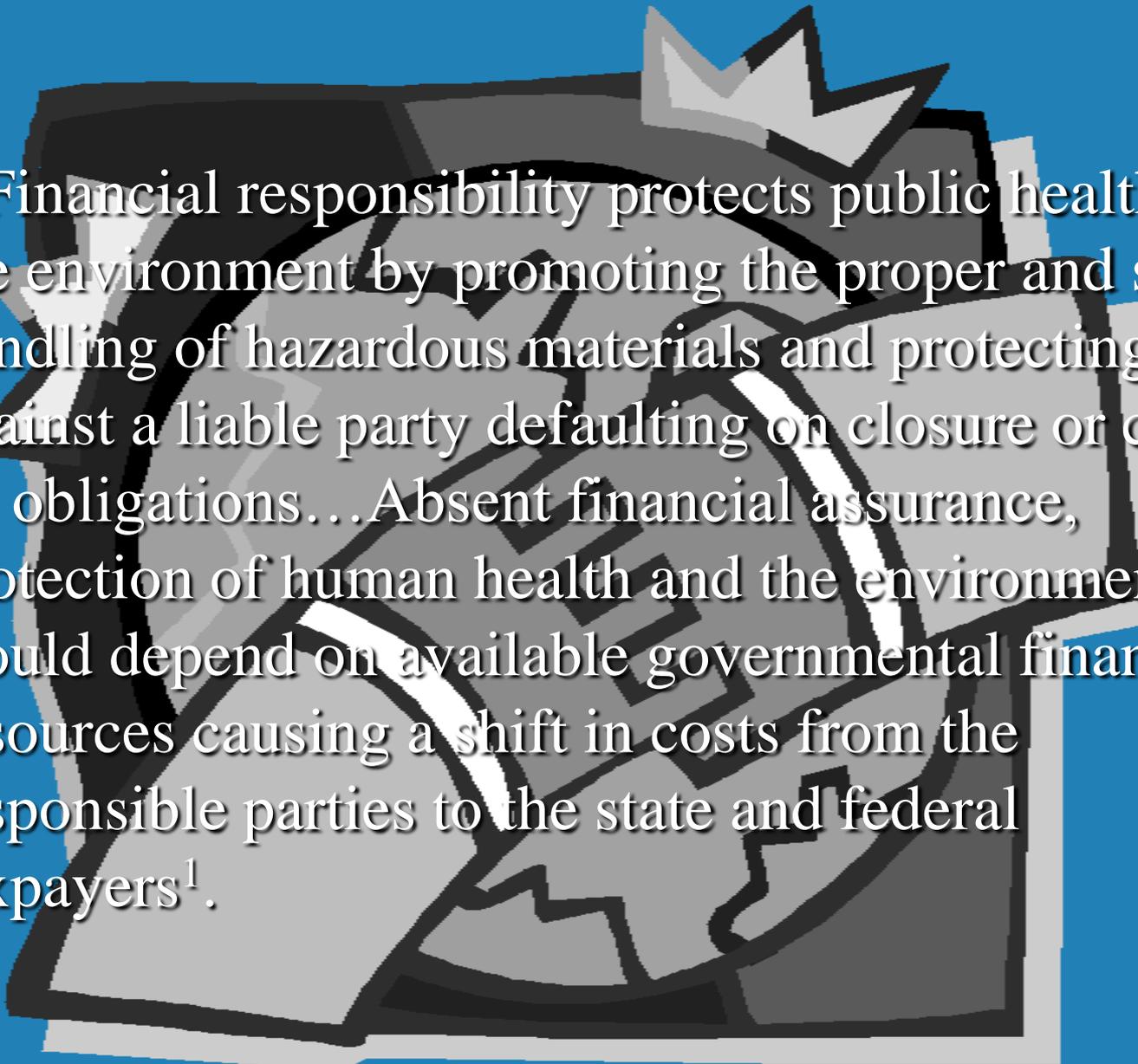
Presented to:

**EPA's 2006 National Corrective
Action Conference –Session 2,
June 20, 2006**

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...Financial responsibility protects public health and the environment by promoting the proper and safe handling of hazardous materials and protecting against a liable party defaulting on closure or clean up obligations...Absent financial assurance, protection of human health and the environment would depend on available governmental financial resources causing a shift in costs from the responsible parties to the state and federal taxpayers¹.

¹Exerpts taken from EPA's National Program Managers' Guidance Section II. National Priorities for Enforcement and Compliance Assurance.



Take Home Messages

- Several problems identified with RCRA Subpart H financial assurance requirements
- Increased scrutiny of TSDs (interim status and permitted) subject to RCRA financial assurance (FA)/ responsibility
- CTDEP compliance assistance available
- ❖ Similar principles apply to Corrective Action (CA) financial responsibility

RCRA Subpart H Problems Identified

- Few facilities had no issues following file review
- Facility personnel not familiar with Financial Test provisions/ discrepancies in wording, bond rating, corporate relationships
- Annual cost estimates not updated per RCRA/ state requirements
- Instrument language not consistent with rigid RCRA/ state requirements
- Instrument values reduced without prior approval of cost estimate or closure documentation

One of EPA's National Priorities (FY 06-07)

- Financial Responsibility is listed as a National Enforcement Priority: partly based on a review of CT's RCRA closure and post-closure FA files
- Published by OECA in National Program Managers' Guidance, June 2005
<http://epa.gov/compliance/resources/policies/data/planning/npmguidance2006.pdf>
- EPA monitoring financial file reviews per Performance Partnership Agreement

2003 Publication: Enforcement Alert

United States
Environmental Protection
Agency

Office of Enforcement
and Compliance
Assurance (2248A)

EPA 300-N-03-



Enforcement Alert

Volume 6, Number 2

Office of Regulatory Enforcement

April 2003

Financial Assurance Requirements: A Fundamental Compliance Obligation

*Failure to Comply with Financial Assurance Requirements Puts
Human Health and the Environment at Risk*

The Casmalia Resources Hazardous Waste Management Facility was a 252-acre commercial hazardous waste treatment, storage and disposal facility located in Santa Barbara County, Cali-

fornia. Between 1973 and 1989, the facility accepted approximately 5.6 billion pounds of waste in its landfills, ponds, shallow wells, disposal trenches, and treatment units. The owners and operators of the Casmalia facility did not provide sufficient funds to close the facility and care for the site. In 1991, they abandoned their efforts to properly close the facility and clean up the site, which subsequently became known as the Casmalia Resources Superfund Site. The U.S. Environmental Protection Agency (EPA) estimates that it will cost at least \$272 million to remediate this site. Casmalia is an example of how hazardous waste facilities' failure to adequately fulfill their financial assurance obligations can result in Superfund sites.

- Financial mechanisms available for complying with financial assurance requirements;
- Common violations of financial assurance requirements;
- Situations that may trigger an owner's or operator's duty to substitute the financial assurance mechanism; and
- Significant court decisions addressing financial assurance requirements.

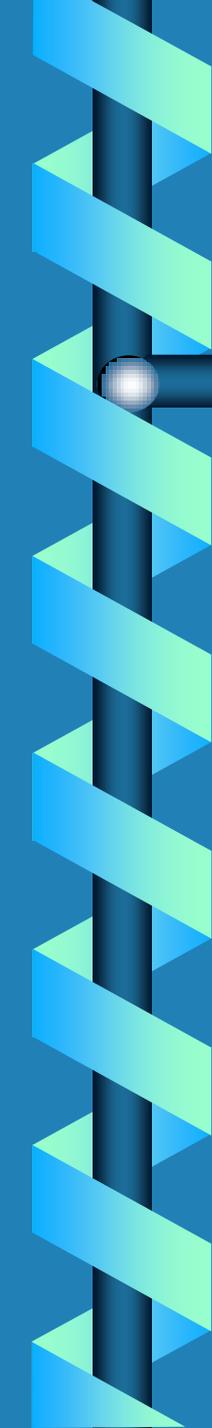
**Financial Assurance
Requirements for
Hazardous Waste Facilities**
Financial assurance requirements

About

Enforcement Alert

Enforcement Alert is published periodically by the EPA's Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance to inform and educate the public and regulated community of important environmental enforcement issues, recent trends and significant enforcement actions.

This information should help the



National Enforcement Priority

- OECA identified financial risks and certain non-compliance with FA obligations
- Established phased-in approach to compliance assurance activities
- Includes RCRA Subpart H and Corrective Action
- Provides states and regions with FA/C-E training

Current CTDEP/ EPA Efforts

- Joint follow up process by EPA/CTDEP
- Scrutinizing past and present non-compliance with RCRA Subpart H requirements
- Using normal enforcement process for quick return to compliance with possible addition of requests for further information per EPA's authority under §3007 of RCRA
- 45 "3007 Information Requests" sent to-date

EPA 3007 Information Requests Detailed

- Opportunity for additional information/documentation of past activities
- Requested information:
 - Owner/operator & corporate relationships
 - CT Property Transfer Program info., if applicable
 - T/S/D (regulated unit specific) & cost estimates
 - Present and past financial assurance documentation
 - Financial release documentation, if issued
 - Owner/operator's written certification

Demonstration of Financial Responsibility

CT's Acceptable RCRA FA Instruments:

- Trust Fund (Funded or Standby);
 - Irrevocable Standby Letter of Credit (“LOC”);
 - Surety Bond (Payment or Performance);
 - Insurance;
 - Financial Test (self insurance); and/or
 - Corporate Guarantee, if applicable.
- Bonds & LOCs require standby trusts
 - CTDEP instrument formats available/ CT HW Management Regulation changes (coming soon)

Overview of Financial Assurance Instruments

- Issued by a financial institution recognized by federal gov't or state agency (e.g., FDIC, Federal Reserve, Circular 570, CT Department of Banking or Insurance, etc.)
- Instruments must be “evergreen”
- Instrument language must be verbatim per CT HW Mgmt. Regs. as incorporated by reference
- Submit documents to “Hazardous Waste Financial Assurance Coordinator”
- ❖ Same instruments used for Corrective Action financial responsibility

Cost Estimates (C-E) Detailed

- Basis for “current” value of FA instrument(s)
- Required in closure, post-closure and remedial work plans
- Reflects maximum cost of closing all units concurrently for the year prepared
- Annual adjustments necessary for inflation and/or modifications/ annual submittal to DEP per 22a-449(c)-104(b)&(105)(d)

Resources:

- See U.S. Department of Commerce Bureau of Economic Analysis’ web site for inflation factors <http://www.bea.gov/bea/newsrel/gdpnewsrelease.htm>
- “Means Building and Construction Cost Data” <http://www.rsmeans.com/>
- *Draft* DEP Inflation Factor Guidance- Call or email your requests!

Financial Responsibility for Corrective Action

- Intended for TSDs to provide adequate financial assurances for investigation and remediation costs
- Financial assurance will be a condition of permits or orders depending on the situation
- DEP may accept phased-in approach on a case-by-case basis per EPA's "Interim Guidance on Financial Responsibility for Facilities subject to RCRA Corrective Action" dated 9/30/03
<http://www.epa.gov/Compliance/resources/policies/cleanup/rcra/interim-fin-assur-cor-act.pdf> (Handout provided)

Corrective Action Flexibility Detailed

- EPA and CTDEP has discretion to determine practical facility-specific FA approaches/ cleanup goals (per interim guidance)
- Use of existing RCRA Subpart H instruments
- Ability to establish FA compliance schedules in permits and enforcement actions
- RCRA permitted and interim status TSDs held to same financial responsibility

Financial Assurance Contacts

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QUESTIONS?

