

Final Notes

NEWMOA Hazardous Waste Conference Call

July 9, 2019

Topic: RCRA Financial Assurance (FA)

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Participants: CT DEEP (3 people); Mass DEP (2 people); NH DES (6 people); NJ DEP (6 people); NYS DEC (6 people); RI DEM (1 person); VT DEC (4 people); EPA Region 1 (3 people); EPA Region 2 (2 people); NEWMOA (1 person)

Call leader: CT DEEP

Notetaker: NJ DEP

State Comments / Questions

Connecticut: 60-70 RCRA and solid waste (SW) facilities with approximately 400-500 instruments (\$500 million of coverage). Issues discussed included:

- Noncompliance with instruments:
 - 1) Reoccurring errors in formats
 - 2) Financial institutions
 - 3) Globally tracking physical documents (i.e., letters of credit)
 - 4) Lack of tracking system in place
 - 5) RCRA financial instruments used for closure of facility
- Other problems noticed:
 - 1) In CT staff Engineer reviewing financial assurance (FA) for compliance. Financial institutions have attorneys.
 - 2) Language changes in instruments that come back with wrong wording (non-compliant).
 - 3) Cost estimates adjusted to less than it required. Gross national product (GNP) used in CT.

- 4) Trust fund – no wet signatures, corporate stamp missing, no Certification of Corporation acknowledgement.
- 5) Cost estimates of <\$10,000 banks will not look at it.
- 6) Instruments take 30-60 days for Commissioner to review.
- 7) RCRAInfo – database used by EPA for tracking only. Inspector General (IG) reports shows noncompliance in CT for FA. FA module does not help in assessing compliance – does not indicate when FA is released.

Vermont: Questions:

- 1) What triggers FA in each State?
- 2) Adequacy in cost estimations? Cost estimates low?

EPA did a national level assessment and found that FA was woefully low.

Vermont: Looks at closure plans and doing an estimate following its outline of steps.

EPA Region 1: Bankruptcy case - changes FA. Worked with EPA, states (11), and Department of Justice. Took letters of credit and cashed them and entered funds in a trust until the company emerged from bankruptcy. There are handful of cases where the company left the site and state cashed the FA instrument, including letters of credit, trust funds, or insurance policies.

Connecticut: Letter of Credit funded by trust agreement, neglected sites FA state operates FA. Need advanced level of FA training provided by EPA (Region 1/2). Would like all states and EPA to be doing the same thing consistently in terms of estimating costs and reviewing post closure plans.

Vermont: Program can be bifurcated from the base RCRA program and the closure and post-closure staff; remediation staff oversee FA for closure and post closure and RCRA staff oversee FA. Cost estimation can be problematic. Have reached out to waste management companies to get real time costs, but this is difficult to do. Asking these companies to compile information on costs and waste streams when there is no benefit for them is difficult.

EPA Region 1: EPA headquarters looking to develop training course in future. They are trying to get Industrial Economics Corporation (IEC) to do training in the region. Region can provide framing/sponsoring of training. Noted that Cost Pro is out of date. EPA HQs is responsible for updating it.

EPA Region 2: Agreed that training is good idea for NY/NJ. Also added the following issues:

- 1) Instruments language not correct
- 2) Cherry-picking corporate guarantees
- 3) Assurity bonds – using real life situations

An example is when Dupont split and create created Chemours and Dupont, the resulting entities cherry picked the FA and the corporate guarantee did not list all of the facilities that were using it.

Would be good to have a practical discussion covering defective instruments. Insurance and Surety bonds are used that often. Should cover in training and the course should focus on real life situations. Advanced training needs to be 4-5 days long and include cost estimating.

Vermont: RCRAInfo FA module needs “beefing” up. Does not help with tracking and assessing compliance.

EPA Region 1: FA module used as a tracking tool for EPA oversight.

Connecticut: Region 5 using FACT – FA Compliance tool (web based) used for CERCLA FA compliance. Provided by IEC. Online version has RCRA closure/post closure and liability information, calculator for financial test, day-to-day tracking with amendments, document repository, holistic view of Corporate information, feeds data to RCRAInfo, and runs reports (Freedom of Information Act (FOIA) requests). Also shows instruments that are entered out of state. Can help provide a holistic view of the company’s information from all sites. EPA Region 4 and 5, particularly Alabama and Wisconsin, are using the tool for CERCLA FA. CT is piloting its use for RCRA closure/post closure. CT is mapping FACT against all the data they need. They are looking for other states to use it. The tool can run extensive reports.

RCRAInfo Conference in Chicago, IL (8/26-8/30) will cover FA module.

Region 4 (in AL) will have a basic FA training seminar that will talk about the FACT tool.

Need to have a FACT manager and point person on FA and the information in a fire-proof space. Need to centralize FA service division and track paper copies and electronic data. FACT can flow data to RCRAInfo even though it’s not fully mapped to RCRAInfo. IEC is doing work for EPA Region 5. Next week DEEP is going through a reconciliation to fully map the data between RCRAInfo and online FACT.

New Hampshire: FA for large quantity handler universal waste (9) and transfer facilities (i.e., Tradebe). Two of these are trying to get adequate FA. Issues: accurate closure estimates, agreements not filled in properly, taking years to find bank to get surety bond and more training. DES copied the Federal Rule language into a Word document to help facilities fill in the blanks, but the companies don’t fill in the agreement correctly even with this template. It can take a site two or three years to find a bank to do a surety bond. NH DES needs more training on FA.

New Jersey: Same issues as CT. Interested in Region 4 FA training. Issues: facility problems establishing Standby Trust with financial institutions and creating Trust with financial institution burdensome to facility.

Connecticut: Example – under a TSD closure, a Standby Trust was not used. Federal funding requirements used. DEEP would like more flexibility and not requiring stand by trust and letters of credit.

New York: Interested in Region 4 FA training. EPA will share information on training.

EPA’s national FA calls: all states can participate.

Rhode Island: FA rules incorporated from Federal rules. FA for remediation waste treatment facilities, TSDFs, and transfers. Issues include: tracking/monitoring funds, and staff attorneys are required to review all agreements and have cost estimates reviewed by a third party to verify closure costs.

Vermont: Similar to NH. Eight RCRA facilities with FA. FA tracked internally by using a spreadsheet. Revised cost estimates by inflation sometimes off. Only one recent closure of facility, called ACME Works, which was a ten-day transfer facility. Took place last year. Had a stand by Trust. Safety Kleen facility required FA for transfer storage facility. Need more comprehensive training particularly on cost estimates.

Connecticut: Wrap-up:

- 1) Plan to update State FA regulations; timeframe for draft is September 2019. Willing to share in the fall. Current regulations date back to 2002 and is outdated. Need to update inflation factors.
- 2) Input on Corporate financial tests.
- 3) Adding contingencies – 15 percent for all cost estimates for unforeseen / unaccountable situations
- 4) Change for cost estimates reduction (15 percent or more difference)
- 5) Develop process for calling FA when company out of business and site not clean.
- 6) Pick up post closure rule.
- 7) Look up closely at FA language under 40 CFR 267.
- 8) Add appropriate language changes into regs and make them enforceable.

EPA Region 2: Need to standardize documents and make it easy to identify discrepancies in instruments. Should be able to a comparison using Word to assess compliance with instruments focusing on standard language. Instruments can be locked in Word format. It's helpful to create a Standard Operation Practice (SOP) for engineers and analysts who review documents when they are submitted. States can ask companies to submit a formatted draft that can be compared with the template line by line.

Connecticut: Looking at incorporating appropriate changes and locking enforceable and standardized language in regulations.