



U.S. Environmental Protection Agency – November 2005 **Compliance and Enforcement National Priority: Financial Responsibility under Environmental Laws**

The United States Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assistance (OECA) established six national priorities for federal fiscal years (FY) 2005 through 2007, and then added financial responsibility as a national priority for FY 2006 through 2007. OECA and the EPA's 10 Regions will make the following issues priorities for monitoring, compliance assistance, enforcement, and clean-up actions.

1. Clean Air Act: Air Toxics
2. Clean Air Act: Prevention of Significant Deterioration and New Source Review
3. Tribal
4. Clean Water Act: Wet Weather, including:
 - Concentrated Animal Feeding Operations
 - Combined Sewer Overflows
 - Sanitary Sewer Overflows
 - Storm Water
5. Resource Conservation and Recovery Act: Mineral Processing
6. Petroleum Refining
7. Financial Responsibility Under Environmental Laws

Background

Certain environmental laws carry financial responsibility requirements to ensure that adequate funds are available to address closure and cleanup of facilities or sites that handle hazardous wastes, hazardous substances, toxic materials, or other pollutants as well as the clean-up of those materials so they do not contaminate soils, groundwater, surface waters and the air. These requirements protect 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. Inadequate or lack of financial responsibility can result in EPA or State governments (and ultimately the tax payer), funding Resource Conservation and Recovery Act (RCRA) closure and post-closure activities, RCRA corrective actions and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) cleanups.

Financial Responsibility was selected as a national enforcement and compliance priority for the FY 2006-2007 period because it met the selection criteria: (1) increased national attention to this issue could lead to significant human health and/or environmental benefits; (2) there were patterns of noncompliance in this area; and (3) EPA is well suited to take action in this strategy area.

The principle goal of the Financial Responsibility national priority is to ensure that human health and the environment is protected by: (1) addressing noncompliance with the financial responsibility requirements under the federal environmental laws, (2) optimizing the financial safeguards under the federal environmental laws, and (3) optimizing EPA's resources. As each environmental law's financial responsibility requirements are unique the Agency will likely take a different approach under this priority to each financial responsibility program in order to

achieve the overall goal of this priority

As with the other national enforcement priorities, a strategy has been developed to ensure that EPA meets its goals. The strategy describes how the Agency will address the human health and environmental problems associated with failure to comply with financial responsibility requirements under the federal environmental laws. Through the strategy, the Agency is: (1) defining enforcement goals for several environmental laws; (2) establishing how we will measure our accomplishments in pursuit of these goals; (3) identifying what compliance tools are appropriate to reach the goals; (4) developing a plan to maintain compliance with the financial responsibility requirements once the strategy's goals have been met; and (5) assessing the resources needed to reach the identified goals.

When developing the strategy, EPA reviewed the financial responsibility requirements under the environmental laws and concluded that there are two basic groups that comprise the regulated population for purposes of financial responsibility. It is important to identify the distinction between the two groups. One group is comprised of those entities presently required to provide financial responsibility in advance of closing their operations. A notable example of this type of group is hazardous waste treatment, storage, or disposal facilities (TSDs) subject to the financial responsibility requirements for closure and post-closure under RCRA. The other group is comprised of those facilities where there have already been releases, and the entities are responsible for cleaning up the contamination. In this situation, for example, potentially responsible parties (PRPs) under Superfund would be required to provide financial assurance for that response action under the Consent Decree.

Environmental Problem

Having the financial wherewithal to perform closure and/or cleanup is critical to protecting human health and the environment from toxic and hazardous waste and substances that are polluting the land, air, and water. The financial responsibility requirements achieve this protection by: (1) promoting the proper handling of hazardous and toxic, waste and substances, (2) ensuring that funds will be available to address contamination; (3) preventing the shifting of cleanup costs from the responsible party to the tax payer or other parties; and (4) making facilities and land available to the public for reuse.

OECA is concerned that entities are not providing adequate financial responsibility in accordance with their obligations under federal environmental laws. Recent studies and inquiries by the EPA Office of Inspector General and the Government Accountability Office have noted issues regarding compliance with the financial responsibility requirements under RCRA closure/post-closure, RCRA corrective action, CERCLA cleanups and SDWA UIC program. Also, ongoing EPA Regional assessments of owner/operators compliance with RCRA Subtitle C closure and post-closure financial responsibility requirements, for example, have identified a wide range of violations, e.g., inadequate financial mechanisms, failure to update annually inflationary increase for cost estimates. These violations place the public at risk because of the potential financial inability to close or clean-up the site.

Strategy Goal

The strategy's goal is to ensure that EPA has optimized its financial safeguards under the existing

financial responsibility requirements through compliance assistance, compliance monitoring, and enforcement. To achieve this goal, the strategy establishes specific sub-goals to be accomplished by the end of FY 2007.

Sub-goal 1: RCRA Subtitle C Closure/Post-Closure – Optimize the financial safeguards under RCRA, as well as EPA’s limited resources, by ensuring that by FY 2007, 25% of TSDs within the targeted universe are in compliance or on the path to compliance with their financial responsibility obligations under RCRA Subtitle C closure and post-closure.

Sub-goal 2: RCRA Corrective Action Goal – By the end of FY 2007, optimize EPA's protection against the risk of default by owners/operators of TSD facilities on their corrective action obligations by assessing and monitoring financial assurance compliance at 35% of the targeted universe of facilities. EPA's focus will be on facilities with significant corrective action work remaining.

Sub-goal 3: CERCLA – Optimize EPA's protection against the risk of default by PRPs on their cleanup obligations by assessing and monitoring compliance with financial assurance requirements at 90% of the targeted universe. EPA's focus will be on situations where there is a financial assurance commitment for significant cleanup work. EPA will also be ensuring, wherever appropriate, financial assurance requirements are included in new CERCLA enforcement agreements requiring PRP cleanup work.

Sub-goal 4: TSCA -- Optimize the financial safeguards under TSCA as well as EPA’s resources, by ensuring that by FY 2007, 75% of the owners and operators of PCB commercial storage and/or disposal facilities within the targeted universe are in compliance or on a path to compliance with their financial responsibility obligations.

Sub-goal 5: RCRA Subtitle I (Underground Storage Tanks) and SDWA UIC Program -- Evaluate through discussions, scoping projects and information gathering whether the Safe Drinking Water Act (SDWA) and RCRA Subtitle I in FY 2006 are candidates for inclusion in the financial responsibility national priority.

Sub-goal 7: Capacity Building – Through the development of tools, guidance and training, EPA will engage in Regional and State capacity building in the area of compliance monitoring, and enforcement for financial responsibility requirements..

Performance Measurement

The ultimate goal of this strategy is to ensure that the financial responsibility requirements under existing financial assurance requirements are met in order to protect human health and the environment. As the sub-goals above are achieved, there will be increased compliance with the financial responsibility requirements. OECA and the Regions will be establishing baseline compliance status of the targeted universes under RCRA and CERCLA; tracking compliance assistance; and engaging in compliance assurance and enforcement activities. OECA will also explore ways to measure positive changes in the behavior in the targeted universes resulting from enforcement and compliance activities. As concerns with financial responsibility are addressed and progress is measured, EPA will evaluate whether or not this area of the law will be returned to core program or remain a national priority for FY 2008 to FY 2011.