



U.S. Environmental Protection Agency - October 2007 FY08 – FY10 Compliance and Enforcement National Priority: Financial Responsibility Under Environmental Laws

What is the Environmental Problem?

Many environmental statutes contain financial responsibility provisions. Generally, financial responsibility requires regulated entities to set aside funds, obtain, or otherwise guarantee that funds will be available to address short and long term risks associated with the management and permanent disposal of hazardous materials, substance and wastes so as not to adversely affect human health and the environment.

Financial responsibility protects human health and the environment by preventing improper handling and release of hazardous materials and wastes, ensuring funds will be available to address contamination, preventing the shift of cleanup costs from the responsible party to the taxpayer or other parties; and making facilities and land available to the public for reuse. These benefits are lost unless there is compliance with the financial responsibility requirements and enforcement where there is a failure to maintain sufficient financial assurances. Absent financial assurance, protection of human health and the environment would depend on available governmental financial resources. Compliance and enforcement of financial responsibility requirements is consistent with EPA's mandate to prevent harm to human health and the environment, deter illegal activities, and the Agency's long-standing "polluter pays" principle.

The Office of Enforcement and Compliance Assurance (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 (IG) and the Government Accountability Office (GAO) 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's or operator's compliance with RCRA Subtitle C closure and post-closure financial responsibility requirements, for example, have identified a wide range of violations. These violations place the public at risk because of the potential financial inability to close or clean-up the site.

Why Are We Addressing this Problem?

Prior to the designation of financial responsibility as an enforcement priority, OECA and the States noted compliance concerns and engaged in discussions and activities to address these

issues. Several of the environmental laws with financial responsibility requirements do not provide for authorization of State programs (e.g., CERCLA, TSCA) and EPA must take the lead in addressing financial responsibility issues. In programs that have a state and federal component, EPA plays a crucial role by providing national leadership regarding the implementation and enforcement of the financial responsibility requirements.

With the emergence in 2005 of financial responsibility as a potential OECA national priority, support for OECA's decision to undertake this area as a national priority came from EPA's IG and the States. Areas that have been identified by OECA, the IG and GAO where EPA can provide leadership are capacity building, revising national databases to incorporate and better track financial responsibility, additional guidance and oversight regarding enforcement of financial responsibility requirements and highlighting the importance of financial responsibility nationally.

Since a portion of the non-compliances attributed to national companies are systemic, EPA has an important role to play as it is better able to address the violations corporate-wide. Moreover, some of the legal issues associated with the non-compliance are being encountered for the first time in case development, settlement negotiations and litigation. EPA's national focus on financial responsibility will lead to national consistency, highlight the importance of financial assurance, ensure the proper and safe management of hazardous substances, wastes and pollutants, and assures that the billions of dollars needed to properly close and clean-up hazardous wastes and substances will be available.

How is OECA Addressing the Problem?

EPA initiated a phased approach in the examination of compliance and enforcement issues. OECA has initiated its review by looking at RCRA Subtitle C closure/post-closure, RCRA corrective action, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Toxic Substances Control Act (TSCA). OECA then plans to evaluate the Safe Drinking Water Act (SDWA) and RCRA Subtitle I to determine if the financial assurance programs under these laws should be included in this priority. The phased approach allows OECA the ability to assess the information as it is gathered and focus its activities on significant environmental or compliance problems as well as adjusting its responses (e.g., enforcement, compliance assistance, etc.) when dealing with several environmental statutes that may have uniquely associated compliance and environmental concerns.

Highlights from the FY 2005-2007 Planning Cycle

OECA has been able to identify some trends from the work undertaken during FY'06-FY'07. This work was focused primarily on the preliminary review of financial instruments and compliance determinations under the RCRA, TSCA and CERCLA requirements and obligations. As the priority has progressed, concerns regarding cost estimates have been raised and OECA is placing additional focus on cost estimates (particularly for RCRA corrective action). Though this information is generally still preliminary and under review, it gives OECA a basis to make informed decisions regarding prioritization of and type of enforcement activity it will initiate to

address the identified non-compliance EPA anticipates during FY'08 to focus its resources on addressing the identified non-compliances with the financial responsibility requirements.