United States Environmental Protection Agency

Office of Solid Waste and Emergency Response

EPA

DIRECTIVE NUMBER: 9901.0

TITLE: Enforcement of Liability Requirements for Operating RCRA Treatment, Storage, and Disposal Facilities

APPROVAL DATE: October 29, 1986

EFFECTIVE DATE: October 29, 1986

ORIGINATING OFFICE: OWPE/OECM

☒ **FINAL**

☐ **DRAFT**

LEVEL OF DRAFT

- ☒ A — Signed by AA or DAA
- ☐ B — Signed by Office Director
- ☐ C — Review & Comment

REFERENCE (other documents):

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EPA

United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number: 9901.0

2. Originator Information

Name of Contact Person	Mail Code	Office	Telephone Code
Jackie Tenusak	WH-527	OWPE	475-8729

3. Title

ENFORCMENT OF LIABILITY REQUIREMENTS FOR OPERATING RCRA TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

4. Summary of Directive (include brief statement of purpose)

This memorandum clarifies the EPA's approach to enforcing regulatory requirements for financial responsibility under RCRA at operating treatment, storage, and disposal facilities. This memorandum addresses enforcement against facilities that did not lost interim status for failure to make the required certifications on November 8, 1985.

5. Keywords

RCRA. LOIS, Disposal Facilities

6a. Does This Directive Supersede Previous Directive(s)? [X] No [ ] Yes What directive (number, title)

b. Does It Supplement Previous Directive(s)? [X] No [ ] Yes What directive (number, title)

7. Draft Level

[X] A – Signed by AA/DAA [ ] B – Signed by Office Director [ ] C – For Review & Comment [ ] D – In Development

8. Document to be distributed to States by Headquarters? [X] Yes [ ] No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator	Date
Darlene M Williams	6/20/88
10. Name and Title of Approving Official	Date
Peter Hubbard	24 June 88

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 29 1986

MEMORANDUM

SUBJECT: Enforcement of Liability Requirements for Operating RCRA Treatment, Storage, and Disposal Facilities

FROM: J. Winston Porter, Assistant Administrator
Office of Solid Waste and Emergency Response

Thomas L. Adams Jr., Assistant Administrator
Office of Enforcement and Compliance Monitoring

TO: Waste Management Division Directors
Regional Counsels
Regions I - X

This memorandum clarifies the Environmental Protection Agency's (EPA's) approach to enforcing regulatory requirements for financial responsibility under the Resource Conservation and Recovery Act (RCRA) at operating treatment, storage, and disposal facilities. This memorandum addresses enforcement against facilities that did not lose interim status for failure to make the required certifications on November 8, 1985.

Under the RCRA regulations, an owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility. An owner or operator of a surface impoundment, landfill, or land treatment facility, or group of such facilities, must also demonstrate financial responsibility for bodily injury and property damages to third parties caused by nonsudden accidental occurrences (40 CFR §§264.147 and 265.147).

EPA regions and states have requested guidance on how to enforce these regulations at land disposal facilities that continued operating after November 8, 1985. EPA will continue to enforce these regulations. There is no exception to, or broad waiver by EPA or authorized state programs of, the liability insurance requirement.

Therefore, operating land disposal facilities as well as other hazardous waste treatment, storage, or disposal facilities that have lost their insurance coverage and/or cannot demonstrate financial responsibility for the liability requirement are subject to enforcement for violations of this regulation. 1

Regions and authorized states should initiate formal enforcement against significant noncompliers, defined in the Strategic Planning and Management System as those owners or operators of a land disposal facility with major violations of ground-water monitoring, closure, post-closure, and financial responsibility. The FY 1987 RCRA Implementation Plan (RIP) should be used to determine the order in which enforcement action should be taken against facilities that have no liability insurance. The RIP establishes a framework consisting of two components: a set of high priority activities and a scheme for categorizing other handlers into relative priority groups. Enforcement personnel are encouraged to consider various site specific factors while focusing on significant noncompliers and high priority activities. Further guidance about how individual facilities should be addressed under our priority system can be found in the Enforcement Response Policy.

The terms of the final order developed when enforcement action is taken will depend upon the current situation of the operating facility and its overall compliance status. Generally, the facility may be given from one to six months to come into compliance with the financial responsibility requirements. The time should vary depending upon individual circumstances. For example, if a facility has an application pending with an insurance underwriter, we could give the facility enough time to have the application processed. Conversely, a facility with a poor compliance history could be an appropriate candidate for a limited period of time (one to three months). If the facility owner or operator does not obtain insurance in the timeframe prescribed in the order, the facility should be compelled to close. Of course, other violations at the facility must be addressed, and necessary time periods and appropriate penalties for lack of liability coverage as well as other violations considered.

We encourage enforcement personnel to require the facility to have an alternative mechanism (i.e., a letter of credit) to assure payment of liability judgments or settlements on a case-by-case basis for this interim period of time prior to compliance

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1 The regulations do provide, however, for adjustments in the required level of financial responsibility, on risk-based considerations. 40 CFR §§264.147(d), 265.147(d). The unavailability of insurance may not be cited as a reason to adjust financial responsibility levels.

or closure. We stress that this is an interim action only. The Agency may amend the liability regulations within the next year to include the use of alternate mechanisms, which would offer a more permanent solution to some companies. The ultimate decision regarding the remedy depends upon the status of the facility and the judgment of the enforcement personnel.

The regulatory change that allows a corporate guarantee to be used became effective September 11, 1986. If a State has a corporate guarantee under an authorized program it can be used at this time. The corporate guarantee will not be effective in the authorized States that have not adopted this mechanism by legislation or regulation until they revise their programs accordingly. If an authorized state is in the process of amending its regulation to allow the use of the corporate guarantee, it may allow a firm to use that mechanism as an interim remedy in an order for a period not to exceed one year. Thereafter, unless the State has made substantial progress toward adoption of a final rule allowing the corporate guarantee and submission of it to EPA for authorizaton, the facility should be closed.

The states can also consider the regulatory authority that allows them to assume responsibility for the liability requirement (§264.150) for the facility whose capacity is critically needed, or a situation where the state views the risk as minimal and wishes to assume this responsibility.

It is also imperative that closure and post-closure plans and cost estimates be carefully reviewed at this time. Even if the facility is not compelled to close, it will still be necessary to include additional requirements in the final order if the owner/operator has not adequately addressed closure and post-closure activities and/or cost estimates of closure and post-closure care.

If you have any questions about this policy, or wish additional information or assistance, please call Jackie Tenusak, Office of Waste Programs Enforcement (OWPE) (475-8729) or Pamela Sbar, Office of Enforcement and Compliance Monitoring (OECM) (382-3096). We are also planning to have another conference call for Subpart H contacts and Regional and State enforcement personnel to discuss this policy.