



DIRECTIVE NUMBER: 9477.00-5

TITLE: Risk Retention Groups and Financial Assurance
Requirements

APPROVAL DATE: November 23, 1987

EFFECTIVE DATE: November 23, 1987

ORIGINATING OFFICE: Office of Solid Waste

☒ **FINAL**

☐ **DRAFT**

STATUS:

- | | |
|-----|----------------------------------|
| [] | A- Pending OMB approval |
| [] | B- Pending AA-OSWER approval |
| [] | C- For review &/or comment |
| [] | D- In development or circulating |

REFERENCE (other documents): headquarters

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United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number

9477.00-5

2. Originator Information

Name of Contact Person

Matt Hale

Mail Code

WH-563

Office

OSW

Telephone Code

(202) 382-4740

3. Title

Risk Retention Groups and Financial Assurance Requirements

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

This letter confirms that risk retention groups, if they are licensed in at least state to issue insurance policies, qualify under the RCRA financial assurance requirements. Policies issued by such groups can be used to satisfy the requirements for financial assurance for third-party liability.

5. Keywords

Financial Responsibility / Liability Coverage / Insurance

6a. Does This Directive Supersede Previous Directive(s)?

☒ No

☐ Yes

What directive (number, title)

b. Does It Supplement Previous Directive(s)?

☒ No

☐ Yes

What directive (number, title)

7. Draft Level

☐

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?

☒ Yes

☐ No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator

Jennifer A. Barker, OSW

Date

11/17/87

10. Name and Title of Approving Official

Marcia Williams, Director, Office of Solid Waste

Date

11/20/87

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

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

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OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Risk Retention Groups and Financial Assurance
FROM: Marcia E. Williams, Director
Office of Solid Waste (WH-562)
TO: Waste Management Division Directors, Regions I-X

Attached for your information is a letter from Bruce Weddle, Director of the Permits and State Programs Division, to Harry Shuford of the Environmental Protection Insurance Company confirming that risk retention groups may qualify to issue liability insurance policies under RCRA regulations. As the letter states, policies issued by risk retention groups would satisfy the RCRA requirements if the group was licensed to transact business in one or more states, and if the policy otherwise met the RCRA financial assurance requirements.

Because the question of whether policies issued by risk retention groups can be used to satisfy RCRA financial assurance requirements has been raised in a number of states, I ask that you forward this letter to the RCRA financial assurance contacts in each of your states.

If you have any questions on the letter please contact Matt Hale (382-4740) or Margaret Schneider (382-4696) of my staff.

Attachment

cc: Gene Lucero



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

NOV 10 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Harry Shuford
Environmental Protection Insurance Company
220 E. 42nd Street, Suite 500
New York, NY 10017

Dear Mr. Shuford:

I am writing you, at Robert F. Schiff's request, in response to Mr. Schiff's letter of November 2, 1987 to the EPA Office of Solid Waste. In his inquiry, Mr. Schiff sought our view of whether the Resource Conservation and Recovery Act (RCRA) requirements that hazardous waste management facilities demonstrate financial assurance for liability can be satisfied by a policy issued by a risk retention group.

The RCRA regulations at 40 CFR Subpart H require, in part, that to satisfy the financial assurance requirements, an insurance policy must be issued by an insurer licensed to transact business in one or more states. (40 CFR 264.147(a)(1)(ii), (b)(1)(ii) and 265.147(a)(1)(ii), (b)(1)(ii)). A risk retention group which meets the requirements of the Risk Retention Act of 1986 and which is licensed to transact the business of insurance in at least one state would satisfy this regulatory requirement. Your letter indicates that the Environmental Protection Insurance Company (EPIC) has met these conditions. Accordingly, policies issued by EPIC in conformance with all other requirements of Subpart H could be used to satisfy the Federal RCRA requirements for liability coverage, or the requirements of an authorized state that adopted the Federal regulatory language.

I should add, however, that compliance with Federal requirements may not be sufficient to fulfill state requirements. State RCRA requirements may be more stringent than the Federal requirements. In states authorized to

administer the RCRA program, therefore, state regulations must be examined to determine whether your specific mechanism satisfies the RCRA financial assurance requirements and is otherwise consistent with state law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce R. Weddle".

Bruce R. Weddle
Director
Permits and State Division

cc: Robert F. Schiff
RCRA Waste Management Division Directors, Region I-X