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TITLE: Clarification of Intended Meanings in Hazardous
Waste Facility Certificates of Liability Insurance

APPROVAL DATE: 10-8-82

EFFECTIVE DATE: 10-8-82

ORIGINATING OFFICE: Office of Solid Waste

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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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Key Words: Insurance

Regulations: 40 CFR 264.147, 265.147

Subject: Clarification of Intended Meanings in Hazardous Waste Facility
Certificates of Liability Insurance

Addressee: Dr. R.M. Aickin, Director, ERAS (International) Limited, Ibex
House, Minories, London EC3N1HJ, England

Originator: Bruce R. Weddle, Acting Director, State Programs and Resource
Recovery Division

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Summary:

In using the word "occurrence" in the Certificate, the Agency did not intend to limit the insurance policies which may be used to meet the requirements of §264.147 or §265.147 to occurrence-based policies. Nor did the Agency intend to exclude coverage provided by claims-made policies, or to amend claims-made policies so that they respond on an occurrence basis. Furthermore, use of the words "each occurrence" in the Certificate is not intended to alter limits of liability under the policies which respond on a "per claim" or "per incident" basis.

Similarly, use of the terms "sudden accidental occurrence" and "non-sudden accidental occurrence" in the Certificate does not preclude the use of other terms such as "environmental impairment" or "pollution incident," in the insurance policies to describe the extent of coverage. While the Certificate language is not intended to modify the contractual obligations regarding extent of coverage under the insurance policies used to satisfy the liability coverage requirements, the opposite is true for the endorsement of insurance.

Dr. R. M. Aickin
Director, PPAS (International) Limited
Ibex House
Minories
London EC3N 1RJ, England

Dear Dr. Aickin:

Thank you for your letter of July 26, 1982, regarding the Hazardous Waste Facility Certificate of Liability Insurance included in the liability coverage regulation applicable to hazardous waste facility owners and operators (40 CFR 264.151(j)). As Acting Director of the Division responsible for development of the liability coverage regulation, I am pleased to provide you with the following response.

Your concerns, as we understand them, have to do with the Agency's intent in using certain terms in the Certificate. To clarify the intended meanings, we confirm the following. In using the word "occurrence" in the Certificate, the Agency did not intend to limit the insurance policies which may be used to meet the requirements of 40 CFR 264.147 or 265.147 to occurrence-based policies. Nor did the Agency intend to exclude coverage provided by claims-made policies, or to amend claims-made policies so that they respond on an occurrence basis. (The Agency's intent in using the term "occurrence" is indicated in the preamble to the regulation under "Definitions and Usage" (47 FR 16551, April 16, 1982).) Furthermore, use of the words "each occurrence" in the Certificate is not intended to alter limits of liability under the policies which respond on a "per claim" or "per incident" basis.

Similarly, use of the terms "sudden accidental occurrence" and "nonsudden accidental occurrence" in the Certificate does not preclude use of other terms, such as "environmental impairment" or "pollution incident," in the insurance policies to describe the extent of coverage. As indicated in the preamble, the Agency does not intend that the Certificate language should modify the contractual obligations regarding extent of coverage under the insurance policies used to satisfy the liability coverage requirement (47 FR 16543, under "Extent of Coverage").

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These statements are intended to clarify the meanings of terms used in the Certificate and should not be interpreted as a comment on the acceptability of coverage provided by any particular insurance policy in meeting the requirements of 40 CFR 264.147 or 265.147.

We hope this letter responds to and alleviates your concerns.

Sincerely,

Bruce R. Weddle
Acting Director
State Programs and
Resource Recovery Division
(WR-563)