

**TPSA 2015 Annual Conference
Savannah, Georgia**

Contracts, Contractors, and Due Diligence

**Financials:
Collecting Information Already Collected**

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Due Diligence

- = Care/Investigation a person should take before entering into an agreement
- Write a good contract → prompting/producing good proposals
- Evaluate proposals :
 - audits
 - background checks
 - regulatory research
 - financial assurances

Due Diligence

- = Care/Investigation a person should take before entering into an agreement (CYA)

- **WHY SHOULD WE CARE ?????**

FIFRA into RCRA Materials

- Pesticide Disposal Contracts
- Collected materials from FIFRA into RCRA
- RCRA 1976 – ‘Cradle to Grave’
- Responsibility
- Liability
- Accountability
- Contracts make the liability legally binding

Due Diligence and Liability

- AGAIN, ... WHY SHOULD WE CARE ????
- If not performed and performed properly ...
- THE LIABILITY REACHES INTO ANY POCKET
- OUR PROGRAMS/BUSINESS IS ON THE LINE
- NO PROGRAM/BUSINESS = NO JOB

Due Diligence

- = Care/Investigation a person should take before entering into an agreement (CYA)
- Evaluate proposals :
 - audits
 - background checks
 - regulatory research
 - financial assurances
- BREAKING NEWS!!
 - The Wheel has been invented.

Full Disclosure

INFORMATION PROVIDED BY:

- Ms. Jenny Lopp, Financial Analyst
- Hazardous Waste Section
- NCDENR – Division of Waste Management
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Facility Requirements

The aforementioned “Act” and “Rules” require the owner or operator (“company” or “facility”) of a hazardous waste facility to demonstrate to the N.C. Hazardous Waste Program:

- proper closure of hazardous waste *treatment, storage, and disposal* (TSD) facilities (except for facilities that only store wastes for 90 days or less);
- post-closure care and monitoring of disposal facilities such as landfills and surface impoundments (only disposal facilities where hazardous wastes are to remain after closure are subject to post-closure requirements);
- corrective action remediation; and
- **financial assurance-assuring the availability of funds** for closure and/or post-closure and/or corrective action activities and liability coverage to protect third parties from bodily injury or property damage. **to demonstrate the ability to pay for closure and/or post-closure and/or corrective action active.** In some cases, the owner or operator must also demonstrate financial responsibility to provide liability coverage to protect third parties from bodily injury and property damages.

State Agency Contacts

STATE AUTHORITIES WHICH REGULATE HAZARDOUS WASTE MANAGEMENT Hazardous Waste Agencies Environmental Protection Agency

NEW YORK

*Department of Environmental Conservation
Division of Environmental Remediation
Bureau of Program Management
625 Broadway
Albany, NY 12233-7012
Angela Chieco
518-402-9764
derweb@gw.dec.state.ny.us*

NORTH CAROLINA

*North Carolina Department of Environment
And Natural Resources
Waste Management Division
Hazardous Waste Section
Jenny W. Lopp, Financial Analyst
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NORTH DAKOTA

*North Dakota Department of Health Waste Management
Division of Waste Management
918 East Divide Ave., 3rd Floor
Bismarck, ND 58501-1947
Christine K. Roob
Environmental Scientist
701-476-4121 – phone
701-241-8109 – fax
croob@nd.gov*

OHIO

*Ohio Environmental Protection Agency
Division of Materials and Waste Management
Financial Assurance & Remediation Unit
Shawn sellers
Financial Assurance Specialist
614-644-2933 – phone*

PENNSYLVANIA

*Department of Environmental Protection
Division of Hazardous Waste Management
400 Market Street
Harrisburg, PA 17106
Melissa Gross
Solid Waste Program Specialist
717-783-9769 – Phone
717-787-1904 – Fax
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www.depweb.state.pa.us*

RHODE ISLAND

*Department of Environmental Management
Office of Waste Management – Hazardous Waste
And Waste Oil Topics
Waste Management Division
Hazardous Waste Management
Ms. Yan Li
235 Promenade Street
Providence, RI 02908-5767
401-222-4700 ext. 7529 – Phone
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SOUTH CAROLINA

*South Carolina Department of Health and
Environment Control
Land and Waste Management
Hazardous Waste Program
C. Carroll Burley, Jr.
Environmental Health Manager III
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803-896-4002 - Fax
burleycc@dhec.sc.gov*

SOUTH DAKOTA

South Dakota Department of Environment

Financial Assurances

- **How Are Financial Assurance Obligations Satisfied? General Requirements**

Financial Instruments that can be used to satisfy Financial Assurance Requirements under RCRA:

- Trust fund - Fully funded up front

- Surety bonds- 2 Types:

Financial Guarantee Bond which guarantees payment into trust fund

Performance - Must set up a stand-by trust fund to receive the funds -

Can be expensive to obtain

- Irrevocable standby letters of credit- Irrevocable for at least one year - Bank assures payment - Must set up a stand-by trust fund to receive funds - Can be expensive
- Insurance - Insurance pays on instructions of the agency

Financial Assurances

- **How Are Financial Assurance Obligations Satisfied? General Requirements**

Financial Instruments that can be used to satisfy Financial Assurance Requirements under RCRA:

- Financial test- No financial instrument involved, not “funds” are set aside; Financial Test to determine if the owner/operator must demonstrate that it meets thresholds or Bond rating above Baa or BBB or Tangible net worth that is six times cost estimate or Tangible net worth equal to or greater than \$10 million - Owner/operator must produce annual certification of CFO and outside auditor
- Or a combination of instruments.
- All instruments must be worded and terms of instruments prescribed in the regulations; Combination of mechanisms can be used with some limitations; Instruments can cover more than one facility; State is the beneficiary

Financial Triggers

Triggers to Watch For:

- Declining financial health of a company; (are they paying their bills)
- Incapacity of issuing institution for trust funds, surety bonds, letters of credit or insurance, 60 days to secure replacement ; and
- Changes in cost estimates may trigger need for additional or different financial assurance -- Balance sheet changes may trigger need for additional or different financial assurance
- Annual basis – ask when it was last done.
- For certain types of assurances, your contact will be notified
- DON'T reinvent the wheel – use the resources already available!

Contact Info

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