

GROB

ENTERED

Monzeglio, Hope, NMENV

From: Cobrain, Dave, NMENV
Sent: Monday, March 06, 2006 2:29 PM
To: Monzeglio, Hope, NMENV; De Saillan, Charles, NMENV
Subject: FW: Model language for Financial Assurance for Corrective Action in RCRA 3008(h) AOCs

Attachments: 3008h-aocfa-mod-mem.pdf; FACA Model cover memo 012506.doc; RCRA 3008(h) model FA language Jan 06.wpd; Model 3008(h) AOC.wpd



3008h-aocfa-mod- FACA Model cover RCRA 3008(h) Model 3008(h)
mem.pdf (100 K... memo 012506.d... nodel FA language..AOC.wpd (185 KB)..

-----Original Message-----

From: Ehrhart.Richard@epamail.epa.gov [mailto:Ehrhart.Richard@epamail.epa.gov]
Sent: Monday, March 06, 2006 1:40 PM
To: arahman@tceq.state.tx.us; cremmert@tceq.state.tx.us; CSharp@deq.state.ok.us; Cobrain, Dave, NMENV; Donald.Hensch@deq.state.ok.us; Kieling, John, NMENV; narendra.dave@la.gov; Pullen, Steve, NMENV; saba.tahmassebi@deq.state.ok.us; hynum@adeq.state.ar.us
Cc: Carter.Cathy@epamail.epa.gov; King.Laurie@epamail.epa.gov; Sieminski.Paul@epamail.epa.gov; Banipal.Ben@epamail.epa.gov
Subject: Fw: Model language for Financial Assurance for Corrective Action in RCRA 3008(h) AOCs

Please find attached Model Provisions for Cost Estimates and Financial Responsibility for Use in RCRA Section 3008(h) Administrative Orders on Consent to State and EPA Regional RCRA personnel.

Folks in our Enforcement Division asked that we share this information with you. If you have any questions, please feel free to give me a call.
thanks

Rick Ehrhart
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----- Forwarded by Troy Stuckey/R6/USEPA/US on 03/02/2006 03:15 PM -----

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US

03/02/2006 07:34
AM

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Subject
Fw: Model language for Financial Assurance for Corrective Action in RCRA 3008(h) AOCs

MEMORANDUM

SUBJECT: Model Provisions for Cost Estimates and Financial Responsibility for Use in RCRA ' 3008(h) Administrative Order on Consent

FROM: Susan E. Bromm, Director
Office of Site Remediation Enforcement

TO: Regional Counsels, Regions I-X
RCRA Program Managers, Regions I-X
RCRA Branch Chiefs, Regions I-X

The Office of Site Remediation Enforcement (OSRE) is pleased to issue model financial assurance provisions for RCRA ' 3008(h) administrative orders on consent. This model language replaces Section XXIII (titled "Financial Responsibility") in the December 15, 1993 Model RCRA ' 3008(h) Consent Order. Section XXIII consisted of a note stating that EPA may require Respondent to establish some form of financial assurance. The new Section XXIII is renamed "Cost Estimates and Assurances for Financial Responsibility for Completing the Work." This model language requires facility owners or operators who enter into corrective action agreements under RCRA ' 3008(h) to provide cost estimates for the work to be performed and assurances of financial responsibility to complete the work required by the order.

Ensuring compliance with financial assurance requirements is an Office of Enforcement and Compliance Assurance (OECA) national priority in FY 2006-2007. This model ' 3008(h) order language is part of OECA's broader initiative to improve financial assurance to ensure the cleanup of hazardous waste sites. Information on OECA's financial assurance initiative will be available soon at <http://www.epa.gov/compliance/data/planning/priorities/index.html>.

Under this model provision a Respondent may use any of the following mechanisms to demonstrate financial responsibility for corrective action: trust fund, surety performance or payment bond, letter of credit, insurance policy, corporate guarantee, or self assurance using the financial test set forth in 40 C.F.R. ' 264.143(f). If the Respondent chooses to use a surety bond, a letter of credit or a corporate guarantee, Respondent must also establish a standby trust fund to be available to receive funds from such mechanisms. The new Section XXIII specifies the

conditions under which EPA may demand payment or performance from the financial assurance provider. It also includes provisions for modification of the amount or form of financial assurance and release from financial assurance obligations. OSRE plans to develop sample financial assurance instruments and Atip sheets which will be issued in the near future.

In September 2003, OSRE and the Office of Solid Waste jointly issued "Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action." This guidance provides additional information concerning the statutory authority and regulatory

requirements for financial assurance for corrective action, estimating the cost of corrective action, appropriate times to require financial assurance for corrective action, and dealing with claims of inability to pay for financial assurance for corrective action. The "Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action" is available at: <http://www.epa.gov/compliance/resources/policies/cleanup/rcra/interim-fin-assur-cor-act.pdf>

Information on cost estimating tools is available at: <http://www.epa.gov/compliance/resources/policies/cleanup/rcra/avg-cost-investig-cmplt.pdf>

On November 1, 2005, OSRE issued the Model RCRA ' 7003 Administrative Order on Consent which also includes financial assurance provisions. It is available at: <http://www.epa.gov/compliance/resources/policies/cleanup/rcra/7003-aoc-mod.pdf>.

This new Section XXIII for the Model RCRA ' 3008(h) Order on Consent will soon be available at: <http://www.epa.gov/compliance/resources/policies/cleanup/rcra/3008h-aocfa-mod.pdf>.

I would like to express my appreciation to the Regional offices, the Office of Solid Waste and the Office of General Counsel for their assistance in developing this document. This model order is intended solely as guidance for employees of the U.S. Environmental Protection Agency. If you have questions concerning this model financial assurance language for RCRA ' 3008(h) consent orders, please contact Tracy Gipson, OSRE, at 202-564-4236.

Enclosure

cc: Matt Hale, OSW
Scott Sherman, OGC
Kathy Kelly, Lead RCRA Regional Coordinator, Region 10