

GRCB Financial Assurance Info.



FW Response to the EPA Inspector General's Report Concerning Haz Waste FA Regulations.txt

From: Kieling, John, NMENV

Sent: Tuesday, November 07, 2006 10:07 AM

To: Amindyas, Cornelius, NMENV; Strasser, David, NMENV; Monzeglio, Hope, NMENV; Salem, Brian, NMENV; Cobrain, Dave, NMENV; Moats, William, NMENV; Pullen, Steve, NMENV

Subject: FW: Response to the EPA Inspector General's Report Concerning Hazardous Waste Financial Assurance Regulations

Attachments: Financial Assurance Attachment 1.doc; Financial Assurance Attachment II.doc

FYI

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

From: Bartosh.Diane@epamail.epa.gov [mailto:Bartosh.Diane@epamail.epa.gov]

Subject: Response to the EPA Inspector General's Report Concerning Hazardous Waste Financial Assurance Regulations

In September 2005, EPA's Inspector General (IG) issued a report expressing concerns about the adequacy of EPA's hazardous waste financial assurance regulations. Specifically, the IG requested the development of a plan to address concerns about existing financial assurance regulations that cover captive insurance and corrective action. The IG further requested that the plan address post-closure coverage beyond 30 years, and the expansion of financial assurance beyond treatment, storage, and disposal facilities. EPA responded to the report earlier this week and submitted a plan to address these concerns.

In addition, EPA provided the IG with a summary document that outlines a range of short-term efforts that already are underway to improve EPA's financial assurance regulations, and that outlines plans for continual upgrades in subsequent years. Among other things, some of the high-priority initiatives include:

- Deciding whether to propose revisions to the existing hazardous waste financial assurance regulations.
- Updating the CostPro estimating model.
- Engaging states and the regulated community in discussions about financial assurance for facilities under RCRA corrective action.

Copies of EPA's plans are included with this email as Attachments 1 and 2. Copies of the September 2005 IG report and the transmittal memorandum are available on the internet at:
<http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/financial/facover.htm#1a>.

(See attached file: Financial Assurance Attachment 1.doc)(See attached file: Financial Assurance Attachment II.doc)



ATTACHMENT I

RESPONSE TO RECOMMENDATION 4.1 – EPA’s Plan for Addressing Concerns with the Existing Financial Assurance Regulations.

A. The Corporate Financial Test

EPA’s experience and information is that the financial test and other financial assurance mechanisms have been effective elements of the hazardous waste program. The third-party financial assurance mechanisms have had a salutary effect in weeding out marginal facilities, and the financial test has similarly been effective in denying self insurance to economically marginal facilities. There have been relatively few documented cases of “failure” of the financial test leading to costs to the taxpayer.¹ However, EPA also recognizes the potential vulnerability of any “self insurance” mechanism² (we proposed changes to the test in 1991³), as well as the difficulties States and EPA Regions have had in implementing the current test. In response to concerns with the financial test and other aspects of the financial assurance program, in March 2004, EPA requested the Environmental Financial Advisory Board (EFAB), a federal advisory committee to EPA, to review a series of questions about the financial test, insurance and other aspects of the financial assurance program.

These concerns⁴ have come from a variety of sources, including regulators and the regulated community. The concerns range from apparent inadequacies of the test itself to implementation issues related to the difficulty of oversight and the adequacy of expertise available to review test submissions. We have worked with the EPA Regions and States and other interested parties to address the identified concerns, and have developed a range of options to address issues related to the financial test. Some of these options are non-regulatory, such as training and securing specialized expertise for

¹ The 2005 Inspector General’s report noted two companies that passed the financial test, and subsequently entered or nearly entered bankruptcy. In one case, the State successfully obtained a trust fund from the company; in the other, the State successfully obtained an insurance policy.

² See for example, Discussion Paper 01-42, James Boyd, Resources for the Future, “Financial Responsibility for Environmental Obligations: Are Bonding and Assurance Rules Fulfilling Their Promise,” August, 2001.

³ See 56 FR 30201, July 1, 1991.

⁴ This document addresses only the regulatory issues that have been raised. Specific concerns that have been raised include: (1) some States may lack the expertise required to review submissions; (2) the regulations allow companies to report information that is derived from their audited financial statements, and there may be no clear road map from the filing to the derivations, so States are uncertain whether these are appropriate derivations; (3) the test relies upon balance sheet information that may not reflect all of a company’s environmental obligations; (4) the regulations do not clearly require the reporting of cleanup obligations; (5) the test relies on an inappropriate bond rating specification because it can be based upon the collateral backing the bond and acceptance of the lowest level of investment grade (e.g. BBB-); (6) the test is not as predictive of bankruptcy or ability to pay as the EPA tests in the standardized permit rule and for private owners and operators of municipal solid waste landfills (MSWLFs); and (7) some financially sound companies are not eligible to use it to assure all obligations associated with their facilities, and thus incur increased costs to comply with the financial assurance regulations.

difficult reviews. The major regulatory options under consideration at this time (some of which may be pursued together) are: (1) the status quo – that is, no regulatory changes; (2) issue a final rule based on the July 1, 1991 proposed Subtitle C financial test,⁵ as modified in the Standardized Permit Rule;⁶ (3) require companies using the ratio alternative of the financial test to receive a third-party assessment of their credit position, as recommended by the EFAB;⁷ (4) modify the bond rating component of the test,⁸ and (5) address documentation requirements for the RCRA Subtitle C financial test.⁹

Based on our current schedule, and with input from the EPA Regions and States, we expect to make a decision on whether to proceed with a rulemaking by the second quarter of FY 2007. During the first and second quarters of FY 2007, EPA will collect current financial information on companies that own or operate treatment, storage or disposal facilities; solicit additional cases of financial test failures; and assemble recent information on special reports. If the Agency decides to proceed with a rulemaking, it will develop a schedule and publish it in the Administrator's Regulatory Agenda.

B. Insurance

The Agency is gathering information on the use of insurance for financial assurance. This involves two major efforts.

Study on Insurance

The Agency is preparing a study focusing on insurance for solid waste landfills to determine if sufficient safeguards have been properly maintained and future liabilities minimized.¹⁰ Some of the concerns that have been identified include possible failure of the insurer, complexity of policy wording, regulatory oversight, and disclosure.

Captive insurance is defined as insurance issued by a wholly-owned subsidiary of the company being insured.¹¹ In recent years, concerns about the use of captive insurance (and insurance in general) as a financial assurance mechanism have emerged from a

⁵ See 56 FR 30201, July 1, 1991, proposal to revise: 1) the financial test criteria for closure and post-closure care by amending the financial ratio requirements; and 2) the financial test criteria for closure, post-closure, and third-party liability coverage by amending the net worth and net working capital multiples.

⁶ See 70 FR 53419, September 8, 2005.

⁷ See Letter from the Environmental Financial Advisory Board to EPA Administrator, January 11, 2006. A copy is available from Dale Ruhter in the Office of Solid Waste.

⁸ See Letter from the Environmental Financial Advisory Board to EPA Administrator, January 11, 2006.

⁹ See Office of the Inspector General Evaluation Report: Continued EPA Leadership Will Support State Needs for Information and Guidance on RCRA Financial Assurance, September 26, 2005.

¹⁰ EPA's 2001 appropriations bill included language that expressed concerns about the potential lack of sound environmental insurance coverage at solid waste landfills. Therefore, the bill directs the Administrator to conduct a study of existing financial assurance agreements to determine if sufficient safeguards have been properly maintained, and future liabilities minimized.

¹¹ See EPA Office of Inspector General Report: Continued EPA Leadership Will Support State Needs for Information and Guidance on RCRA Financial Assurance, September 2005.

number of sources, including the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), the OIG, and the State of California.

Based on these concerns, several options have emerged for consideration. In the case of insurance policies issued by an independent insurer, options include establishing a minimum rating, exploring uniform policy language, and requiring additional disclosure/policy declaration. In the case of captive insurance, options include requiring or encouraging fronting,¹² establishing a minimum rating, and requiring a policy declaration. We expect a draft of the study to be ready to enter an internal EPA review process by the second quarter of FY 2007.

Environmental Financial Advisory Board (EFAB)

In March 2004, EPA requested that the EFAB review a range of issues, including use of insurance as a financial assurance mechanism. The Agency specifically requested that the EFAB consider the strengths and weaknesses of insurance as a mechanism, the need for minimum ratings of insurers, whether a captive insurance policy should be considered equal to a policy written by a commercial insurer, whether such policies should be written differently, whether standardized policy language should be developed, and what safeguards are appropriate for insurance policies written for Brownfields cleanups. After its work on the financial test, the EFAB convened a workshop on captive insurance in June 2006, and continues to examine the issue.

In light of the ongoing efforts in this area, we are not in a position at this time to make a determination regarding whether to amend the existing regulations related to the use of insurance as a financial assurance mechanism. We will continue conducting the study of the use of insurance, and consider additional information as it becomes available. In addition, we will continue to receive input from the EFAB as it progresses in its efforts. After the EFAB provides findings on the issues we presented to them and with the information from our study on insurance, we will commit to a schedule for deciding whether to pursue a rulemaking related to insurance (including captive insurance) as a financial assurance mechanism. Based on our current expectations, OSWER expects to be in a position to make such a decision within one year after receiving EFAB's recommendations and completing the insurance study. If the Agency decides to proceed with a rulemaking, it will develop a schedule and publish it in the Administrator's Regulatory Agenda.

¹² "Fronting" is a form of reinsurance. In a fronting arrangement, an independent commercial insurance company issues a policy, and a company (or a captive insurer) reinsures the policy and reimburses the independent insurance company for costs paid. (For a discussion of fronting, see the March 30, 2001 Office of Inspector General Audit Report entitled "RCRA Financial Assurance for Closure and Post-Closure").

C. Financial Assurance for Corrective Action

In 1986 and in 1990, the Agency proposed detailed regulations for financial assurance for corrective action.¹³ In 1996, the Agency again revisited the issue of whether detailed regulations governing financial assurance for corrective action were needed.¹⁴ For a variety of reasons, the Agency did not promulgate detailed regulatory requirements in this area. Rather, the Agency continues to rely on guidance to implement the requirements in 40 CFR 264.101 that financial assurance be provided for corrective action.

Based on information gathered through years of implementing the corrective action program, and through the above-mentioned rulemakings and other outreach efforts, the Agency has identified several key areas for potential guidance development. Those areas include the timing of financial assurance for corrective action, cost-estimating, financial assurance mechanisms, and discounting of costs for long-term care.

EPA already has issued guidance in some of those areas. For example, in a September 30, 2003, guidance entitled “Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action,” the Agency provided guidance on the timing of financial assurance, cost estimating, and available financial assurance mechanisms. At the same time, we recognize that there continues to be a need for additional guidance in these areas, and in other areas related to financial assurance for corrective action. We continue to hear from Regions and States that they would like to see guidance and/or rulemaking to address financial assurance for corrective action, particularly, the timing of financial assurance for corrective action, cost-estimating, and discounting of costs for long-term care.

At this time, the Agency does not have sufficient basis to conclude that detailed rules governing financial assurance for corrective action are needed, and we have not made a decision, at this time, to pursue regulatory changes to the general requirement for financial assurance in 40 CFR 264.101. During FY 2007, the Agency will establish a workgroup, which will include representatives from the Regions and States, to address issues related to financial assurance for corrective action. Through this workgroup, we will identify and work through issues in this area, and identify areas where we need to develop new guidance (or enhance our existing guidance). If during this process, information arises indicating that the current regulations may not be adequate, we will assess whether regulatory changes in this area are needed.

We also will continue to look to the Superfund program to help us identify approaches adopted by that program that RCRA program implementers might adopt. In addition, we have entered into a dialogue with industry on financial assurance for corrective action, which will inform our approaches.

¹³ See 51 FR 37854, October 24, 1986, and 55 FR 30798, July 27, 1990.

¹⁴ See 61 FR 19432 at 19463, May 1, 1996, where the Agency solicited comment on the need for detailed corrective action financial assurance regulations.

D. Financial Assurance for Post-Closure Care Beyond 30 Years

As many facilities approach the end of the 30 year post-closure care period for regulated units (as required under the regulations at Parts 264 and 265 Subpart G), greater attention is being focused on whether continued care is needed beyond that period. Although the RCRA regulations currently allow for the post-closure care period to be adjusted,¹⁵ under the Subpart H regulations, there are financial assurance challenges associated with extending the care period. For example, questions arise regarding how to revise cost estimates to cover activities that may extend for prolonged periods of time (particularly once a facility has entered the post-closure care period), whether there are particular procedures that should be followed if these costs are assured by third-party mechanisms, and how to ensure that a financial assurance mechanism will continue to be available to cover the costs of long-term activities. (These same issues, or similar issues, arise for long-term post-remedial financial assurance for RCRA corrective actions, although the current regulations for corrective action provide more flexibility.)

During FY 2007, we will work with program implementers as they confront long-term post-closure care situations, and determine whether financial assurance can be effectively implemented through existing regulations, or whether regulatory changes are necessary. We are aware that a number of Regions and States are developing their own approaches to implement long-term post-closure care within the current regulatory structure, and we will have further discussions with them on this issue. Thus, we are not currently pursuing regulatory revisions to the financial assurance requirements for post-closure care. However, we recognize that we have very limited information available to make a decision regarding regulations at this time. If, in the future, additional information indicates that the current regulations may not be adequate, we will reassess whether regulatory changes in this area are needed.

E. Expansion of Financial Assurance Beyond TSDFs

In November 2003, the Acting Deputy Administrator requested a brief study of the Superfund program, commonly referred to as the "120 Day Study." This "120 Day Study" resulted in more than 100 recommendations, three of which are related to the area of financial assurance.

Recommendations 10 and 11 address facilities subject to RCRA, including hazardous waste generators, which are not subject to the financial assurance requirements of Parts 264 and 265. Recommendation 12 addresses facilities managing hazardous substances, but not subject to RCRA requirements. Specifically, the study recommended:

¹⁵ See 40 CFR 264.117(a)(2).

Recommendation 10

OSWER should evaluate the history of NPL listings and removal actions to determine what percent were RCRA treatment, storage, and disposal facilities or hazardous waste generators and to what extent these facilities present a continuing burden to the Superfund program.

Recommendation 11

If the evaluation confirms a high correlation with RCRA-regulated facilities, OSWER and OECA should examine different approaches to financial assurance under the RCRA program to reduce the likelihood of RCRA-regulated facilities becoming part of the future Superfund universe.

Recommendation 12

For facilities not covered under RCRA, OSWER should study whether promulgating new regulations under CERCLA's broad authorities could reduce the future needs of the Superfund program.

EPA has completed its analyses under Recommendation 10 with respect to RCRA TSD facilities. Based on these analyses, EPA has concluded that most RCRA TSD facilities proposed to or listed on the NPL were proposed or listed based on contamination that predated the implementation of the RCRA waste management program. Thus, the proposed or final listing of these facilities does not represent a failure of RCRA regulations.¹⁶ Given this information, EPA is not undertaking further analysis of RCRA TSDs on the NPL under Recommendation 11. EPA will assess whether to undertake changes to the RCRA financial assurance regulations and guidance based on recommendations of the IG, GAO, and the EFAB, which are proceeding on a separate track, and which will provide useful information to EPA in evaluating the RCRA financial assurance regulations.

With respect to generators of RCRA hazardous waste and generators of hazardous substances not regulated under RCRA, EPA is analyzing site information to determine whether the hazardous substances released at proposed or final NPL sites, as well as removal sites, were from legacy contamination that occurred before modern federal and state environmental regulation. If a significant number of NPL sites are being created from recent hazardous substance releases then financial assurance mechanisms under CERCLA section 108(b) will be considered among the tools that may be used to prevent the creation of additional NPL sites. The decision as to whether financial assurance requirements for non-TSDs under CERCLA 108(b) are appropriate will be part of the 120 Day Study follow-up for Recommendation 12.

¹⁶ In fact, it is clear from the analysis that the RCRA waste management program worked as designed. Marginal RCRA TSD facilities were forced to cease operations as environmentally protective RCRA requirements were promulgated and these facilities were unable to comply with RCRA standards and RCRA corrective action requirements.

ATTACHMENT II
UPGRADING IMPLEMENTATION OF THE FINANCIAL ASSURANCE PROGRAM

In addition to consideration of rulemakings, EPA has been pursuing a range of efforts to upgrade implementation of the RCRA financial assurance program. The Agency plans to continue these efforts over the next year and beyond. Some of the key near-term action items include:

- Begin updating the CostPro cost estimating model;
- On a pilot basis, provide expert contractor assistance to Regions and States for review of financial assurance submissions;
- Enter into a dialogue with States and the regulated community on policy issues related to financial assurance for corrective action;
- Advance policy development in the area of financial assurance for post-closure care beyond the initial 30 year period;
- Issue guidance materials (e.g., memorandum on the importance of review of cost estimates and instruments, guidance on managing financial assurance documentation, and memorandum on incorporating financial assurance into oversight activities).

These and other activities, developed in consultation with the States, are discussed in detail below. Information and ideas from some of these activities will likely provide input into current and potential future rulemaking considerations as well.

In developing guidance and other activities in this plan, we will follow the Inspector General's advice that we take advantage of successful guidance, checklists and approaches already used by Regions and States. This document lays out schedules for activities planned in FY 2007 and FY 2008; however, it may need to be adjusted during development of the FY 2007 operating plan, depending on available resources. Schedules and timing may also be further adjusted upon advice of the States.

I. Identification and Development of New Guidance or Policy

During the past several years, EPA has worked with States to identify areas related to financial assurance where additional guidance or policy is needed. We have efforts underway in some of these areas, and will continue over the next year to modify existing guidance and issue new guidance as described below. We will work closely with States and provide an opportunity for comment and discussion with non-governmental stakeholders during the development of these materials to ensure they provide the appropriate level of information needed to effectively implement the RCRA financial assurance requirements.

We anticipate making each of these documents available online via links from the Financial Assurance QuickPlace we established earlier this year, as well as from the

Toolkit we anticipate putting in place (*see* Section II “Improving Communications, Training, Oversight/Assistance, and Data Management” for a description of these communication tools).

A. Updating CostPro (Beginning in FY 2007).

Adequate cost estimates are a key component of the financial assurance program. As EPA developed this strategy, we have learned that many States found the CostPro software to be very useful, but that the current version has become difficult to use as operating systems have been upgraded to versions that are incompatible with the programming of CostPro. Updating this software is a key activity for OSW in the next fiscal year, and our efforts will start at the beginning of FY 2007. This will add to the available cost estimating tools that implementers use, including state developed tools such as the State of Washington’s cost estimation spreadsheets.

B. Memorandum Stressing the Importance of Cost Estimate Reviews (First Quarter, FY 2007).

EPA is working with the States to develop a memorandum stressing the importance of conducting a thorough review of cost estimates for closure, post-closure, corrective action, and of financial assurance instruments, as part of new permit actions and permit renewals. The memorandum in final form will be distributed during the first quarter, FY 2007.

C. Guidance on Managing Financial Assurance Documentation (Third Quarter, FY 2007).

EPA is working with States to develop guidance on maintaining financial assurance files and managing attendant financial assurance information. The guidance will include example approaches (e.g. checklists) to help States maintain their files in a way that basic information they need is readily available. We distributed to the Regions in April 2006, a draft discussion paper on information and file management. We will solicit comments from the Regions, as well as the States, and anticipate developing draft materials based on their input by the third quarter, FY 2007.

D. Memorandum to Regions on Programmatic Oversight of Financial Assurance (Second Quarter, FY 2007).

The Agency is developing guidance on incorporating financial assurance into program oversight activities. We will collaborate with States to assess elements appropriate for inclusion in this memorandum. We expect to complete the guidance by the second quarter of FY 2007.

E. Publish a Series of Fact Sheets on Financial Assurance Instruments (FY 2007/2008)

EPA is in the process of developing summary fact sheets on the use of each instrument. The fact sheets include instructions on accessing funds from the instruments (e.g., how to call in a letter of credit). These fact sheets will be developed in FY 2007/2008.

F. Publish a "Top Ten" Tips Guide for Regulators (FY 2007/2008)

Building on the information we have heard during training classes and through other interactions with the States over the past year, the Agency will work with program implementers to identify useful implementation tips they have learned based on their experiences in the financial assurance program. Topics for the guide include file management procedures, ensuring proper documentation is received from the facility and keeping up to date on the company's financial status.

We will compile these into a shared practices guide so others may benefit from the lessons learned. We will share a draft of the guide with program implementers and solicit input on which tips/lessons they find most useful. This guide will be developed in FY 2007/2008.

G. Update Existing Guidance (FY 2008)

The Agency has launched an effort to update the 1982 Financial Assurance for Closure and Post Closure Guidance Manual, which is the most comprehensive guidance on the financial assurance program. The 1982 document has been a key reference for financial assurance reviewers.

Offering an updated comprehensive guidance manual as an alternative format to the individual fact sheets or topic-specific Toolkit materials will be useful for newer staff. The guidance will be available in FY 2008.

H. Policy Development on Financial Assurance for Corrective Action.

While the Agency issued guidance on Financial Assurance for Corrective Action in September 2003, we recognize that Regions and States can face difficult problems in imposing financial assurance for corrective action. Cost estimating and the timing of financial assurance requirements have been identified as issues. We are currently working with the States on specific issues, and have entered into a dialogue with industry to discuss issues and concerns. In addition, we will convene a workgroup during FY 2007, which will include representatives from the Regions and States, to address issues related to financial assurance for corrective action.

Through this workgroup, we will work through those issues and identify areas where we need to develop new guidance (or enhance our existing guidance). If during this process, information arises indicating that the current regulations may not be adequate, we will assess whether regulatory changes in this area are needed.

We also will continue to look to the Superfund program to help us identify approaches adopted by that program that RCRA program implementers might adopt. (See discussion of “New Workgroups” in Section II.A below.)

I. Policy Development on Financial Assurance for Long-Term Care and Post-Closure.

There are financial assurance challenges associated with extending the post-closure care period beyond 30 years under the current regulations in Parts 264 and 265, Subpart H. For example, questions arise regarding how to revise cost estimates to cover activities that may extend for prolonged periods of time, whether there are particular procedures that should be followed if these costs are assured by third-party mechanisms, and how to ensure that a financial assurance mechanism will continue to be available to cover the costs of long-term activities. (These same issues, or similar issues, arise for long-term post-remedial financial assurance for RCRA corrective actions, although the regulations provide more flexibility for corrective action.) During FY 2007, we will convene a workgroup, which will include representatives from the Regions and States, to address issues related to financial assurance for long-term post-closure care. (See discussion of “New Workgroups” in Section II.A below.)

II. Improving Communications, Training, Oversight/Assistance, and Data Management

We have been pursuing many improvements and will continue over the next year to upgrade implementation of the financial assurance requirements. Four areas are associated with the implementation of the financial assurance program: communication, training, oversight/assistance, and data management (RCRAInfo enhancements). We have efforts ongoing in each of these areas, as described below.

A. Communication.

- Existing EPA/State Groups.

Standing workgroups are used to facilitate two-way exchange of information. These workgroups and their call schedules include:

EPA/State Financial Assurance Bi-Monthly Calls. Bi-monthly conference calls are held between EPA HQ (which includes OECA and OSWER representatives) and the Regions. These calls discuss a wide range of issues, such as cost estimating, that arise during implementation of the regulations and provide a forum for addressing issues across the program. States are included in every other call and provide their perspective as implementers.

Association of State and Territorial Solid Waste Management Officials (ASTSWMO). EPA continues to coordinate with the ASTSWMO key contact for financial assurance to determine how to best utilize the States' expertise and maintain effective two-way lines of communication with respect to financial assurance issues. In addition, we will continue to participate in ASTSWMO meetings to carry on our dialogue with the States on financial assurance.

RCRA Permit Writers. Monthly conference calls are held with EPA and State permit writers on topics of concern, including financial assurance issues.

RCRA Corrective Action. Monthly conference calls are held with EPA and State corrective action staff, and as needed. EPA expects to increase the use of these calls as a forum to discuss financial assurance for corrective action.

- **New Workgroups.**

As discussed in Section I, EPA will establish two workgroups to address concerns and issues associated with financial assurance. One workgroup will look at issues related to financial assurance for long-term post-closure care; the second will look at issues related to financial assurance for corrective action. These workgroups will include representatives from the Regions and States. Through these workgroups, the Agency will identify issues and information gaps, identify successful approaches, work toward the resolution of issues, and make recommendations regarding both program direction and the need for additional guidance or other tools to assist program implementers. If during this process, information arises indicating that the current regulations may not be adequate, we will assess whether regulatory changes in these areas are needed.

- **External Discussions.**

Environmental Financial Advisory Board (EFAB). EPA has raised several financial assurance issues with EFAB. EFAB's membership

includes experts from all levels of government, the finance and banking communities, business and industry, and national organizations. The Board's semi-annual meetings, additional topic-specific workshops, and recommendations provide EPA information on financial assurance.

Industry Trade Groups. EPA continues to coordinate with trade groups, such as: the Environmental Technology Council (ETC); the American Chemistry Council (ACC); and the RCRA Corrective Action Project (RCAP). We meet periodically with these groups, but we meet with other groups on a non-routine basis as well. Agenda items usually are set to reflect topics of interest to either their member companies or topics we wish to obtain input on. We will work with these groups to include financial assurance topics, as appropriate.

- **Web-Based Communication.**

QuickPlace. In March 2006, OSW made the Financial Assurance QuickPlace available to interested EPA and State personnel. It is a self-service web tool that provides a secured accessible workplace for information internal to financial assurance program staff and managers (a list of contacts in each Region and State is available through QuickPlace).

We continue to update, promote and implement the Financial Assurance QuickPlace as an information sharing mechanism. This effort is ongoing.

We will also continue to solicit feedback from the workgroups described above with respect to how QuickPlace may be improved to be: (1) an effective place to centrally locate pertinent financial assurance documents; and (2) a communication exchange mechanism that can be used to share ideas, success stories, and tools; ask questions; and solicit feedback from other financial assurance experts.

Financial Assurance Webpage and Web-based Toolkit. We will build on the QuickPlace notion by first developing a webpage, and later a more comprehensive web-based Toolkit, to facilitate public access to financial assurance information. EPA has used web-based toolkits in other areas as a successful means for sharing information in a variety of formats. Unlike the Financial Assurance QuickPlace described above, the Toolkit will be publicly available via a link from the OSW home page.

The contents of the webpage and Toolkit will be agreed upon by EPA and the States. Contents are likely to include, for example: pertinent

Federal Register notices regarding financial assurance; a general description of the financial assurance regulations; frequently asked questions (FAQs); relevant guidance documents and policy memos; and fact sheets on specific topics.

The webpage will be completed by the second quarter FY 2007. We will establish links to Toolkit contents on an ongoing basis as the items become available and solicit feedback from users in an effort to keep the site current and continuously improve its usefulness.

- Financial Assurance Topic Experts.

We are working collaboratively with the Regions and States to identify staff who are financial assurance experts on specific topics in their organizations, as well as EPA Headquarters and make their contact information available to program implementers. [Note: This expands upon the contact information that is currently available on the Financial Assurance QuickPlace by identifying expert contacts for specific topic areas.]

We will engage with the various workgroups previously discussed to identify priority topic areas and associated financial assurance experts (including cost estimating experts). We will provide contact information for the topic experts to program implementers.

The list of topic areas and associated financial assurance experts will be developed in FY 2007 and posted on the Financial Assurance QuickPlace.

B. Training.

- Financial Assurance Mechanisms.

EPA's Office of Enforcement and Compliance Assurance (OECA) developed a four-day training course on the financial assurance mechanisms. Since December 2003, this training has been offered five times at locations across the country. The training is continuing; a sixth session is currently scheduled for the second quarter of FY 2007, and a seventh session is scheduled for the fourth quarter of FY 2007. EPA will continue to conduct training on financial assurance mechanisms on an as-needed basis in balance with other financial assurance program needs.

- Cost Estimation.

EPA developed a training class on cost estimates for closure, post-closure and remediation. This class has been offered eight times across the country. We have learned through the Financial Assurance QuickPlace (described above) that additional offerings of this class should be provided. EPA will continue to provide the training in FY 2007.

We also provide hands-on training to Regional and State personnel. EPA HQ staff visited a Regional office in April 2006 to review cost estimates side-by-side with Regional staff. Through this experience, we learned that there may be a need to supplement the cost estimating class with one-on-one, "hands-on" assistance. EPA will continue to conduct "hands-on" training to additional Regions on an as-needed basis in balance with other financial assurance program needs.

C. Oversight/Assistance.

- Site Visits.

We will conduct Regional and/or State assistance visits to promote effective program implementation. These visits provide a valuable opportunity for direct communication between EPA HQ, Regional, and State management and staff. Agendas are collaboratively established so that all parties have an opportunity to raise key topics of specific interest or timely relevance.

As resources allow, we will conduct at least two visits per year beginning in FY 2007 that include financial assurance as an agenda topic.

- Review of Financial Assurance Submissions.

During the Training on Financial Assurance Mechanisms, some Regions and States emphasized the significant difficulties encountered in reviewing financial test and insurance submissions due to, for example, lack of adequate resources and the complexity of the information. This finding is supported by other information that has come to EPA (for example, in phone calls, informal discussions at various meetings, etc.).

In response, we plan to provide contractor support on a pilot basis to a limited number of Regions and States for review of financial assurance submissions in FY 2007. We will then evaluate the usefulness of this assistance, and, based on available resources and competing priorities, determine whether to continue providing contractor support.

D. RCRAInfo Enhancements.

- New Financial Assurance Module.

We will incorporate data on financial assurance mechanisms and coverage into RCRAInfo to promote more effective tracking of essential information and enable analyses of financial assurance data.

We have participated in a joint EPA/State WIN/Informed Program Area Analysis (PAA) process to develop functional specifications for the new Financial Assurance Module, and the recommended enhancements were approved by the WIN/Informed Executive Steering Committee in July 2005.

The new module will allow us to track data, such as type of financial assurance instrument, issuer, and the amount of assurance by obligation (closure, post-closure, corrective action).

We will continue to participate in the joint EPA/State Design Team to incorporate the approved recommendations into RCRAInfo. According to the schedule put forth by the WIN/Informed process, the new financial assurance module will be incorporated into RCRAInfo Version 4, which is scheduled to be released in the fourth quarter of FY 2008.

- Additional Enhancements to Promote Data Quality.

Through the Design Team process, we will continue to evaluate additional enhancements to promote data quality.

We will examine feasibility of including additional data elements or data links (including those suggested by OIG in their 2005 Report). Examples include: financial assurance provider links, company links, historical trend information, and cost estimate accuracy information.

We are in the process of developing a schedule for completing the analysis to consider additional data elements. When it is complete, we will submit the recommendations to the WIN/Informed Executive Steering Committee for their review and approval.

Based on the Executive Steering Committee's direction, we will work through the Design Team to incorporate any additional improvements into the RCRAInfo Version 4 release mentioned above.

- Monitor Data Quality.

We will monitor the ongoing use of the new financial assurance module (through periodic HQ auditing and use of annual reports) to ensure the database is being accurately populated and maintained. We will also work with the RCRAInfo user community via their routine conference calls and meetings to evaluate the need for additional data entry guidance (supplementing guidance provided in the PAA report) or reporting capabilities. [Note: This is a future activity since there needs to be sufficient time after RCRAInfo Version 4 is released for system users to identify needs based on actual experience.]