

**Solid Waste Financial Assurance Work Group
December 16, 2011 Meeting Summary**

Participants

Dawn Cleary, GM
Matt Flechter, DEQ
Stephanie Glysson, Republic Services
Tom Horton, Waste Management (conference call)
Ray Ilka, GM – SMCO
Dan Kendall, Kent County DPW
Becky Kocsis, DEQ
Dennis Leonard, DTE Energy
Rhonda Oyer, DEQ
Margie Ring, DEQ
Don Pyle, Delta County Solid Waste Management Authority
Duane Roskoskey, DEQ
Michael Schmidt, Comerica Bank (conference call)
Kim Smelker, Granger III and Associates, LLC
Kevin Somero, Waste Management (conference call)
Steve Sliver, DEQ

Meeting Materials

- Meeting agenda
- Draft October 7, 2011, meeting summary.

Discussion Points

1. The October 7, 2011, meeting summary was revised to reflect industry's concern about continuation of the perpetual care fund (PCF) requirement, and to also reflect that the DEQ remains open to considering alternatives.
2. As requested at the last meeting, the DEQ looked further into the concept of administering all financial assurance requirements from a centralized office, as is done by the Tennessee Department of Environment and Conservation (TDEC) through its Division of Financial Responsibility:
 - Organizationally, the DFR is a division within TDEC's Administrative Services. For comparison to our organizational structure, it might be a section within the Administration Division or a separate office.
 - The DFR was formed approximately 10 years ago. The impetus for centralizing the financial assurance functions in one office was apparently an audit critical of how the financial assurance requirements were being administered in at least one of the major programs.
 - The DFR has 9 staff:
 - Director
 - Accountant

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- Enforcement specialist (law degree)
- 3 staff who focus primarily on solid waste
- 1 staff who handles mostly local government landfills
- 2 administrative staff
- The DFR handles the financial instruments (most are from solid waste and hazardous waste), working with the financial institutions and insurers and regulated community to set them up and keep them current. They also do the BEN and ABEL models (estimate economic benefit of noncompliance and the ability to pay fines) and other financial analyses.
- Technical staff in the various programs still determines who is required to provide financial assurance, typically through permitting processes, and in what amount.
- The DFR is funded with GF/GP monies.
- The DFR does not have any program measures or metrics, and is routinely audited by EPA Region 4.
- Challenges of a centralized financial assurance model include:
 - Need to effectively communicate with program staff
 - Dealing with different requirements and financial mechanism forms from multiple programs
 - “territorial” program staff

The TDEC model appears to be unique among the states, and the DEQ feels adopting it would result in an expansion of current staff and increased costs since financial assurance requirements are currently spread among various program staff who have other duties and who would still be needed to determine the applicability of financial assurance requirements. Additionally, the TDEC model does not address one of industry’s concerns: the fact that financial mechanism forms and associated requirements vary by program. Further, the DEQ believes it can address industry concerns about certain inconsistencies among the various programs through better coordination of financial assurance issues within the department.

3. DTE is still evaluating whether it can meet the financial test under Part 111. If the Part 111 financial test, which is more stringent than the

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Part 115 financial test, can be met, then we should consider allowing the company to use the financial test for 100% of its bonding obligation rather than being limited to 70% as currently specified for Type II landfills.

4. It would be difficult to tie the percent of financial assurance that can be demonstrated by the financial test to the compliance history of the site or owner/operator. The Solid Waste Program is comprehensive and includes numerous requirements, from administrative or recordkeeping requirements to technical design and operating requirements. An attempt to rate the seriousness of violations that should affect financial assurance would be subjective, and it would be a challenge to administer such a requirement uniformly across the regulated community, especially since most disposal areas are inspected at different times and at least 4 times per year – how the timing of those inspections coincides with the annual submittal of the financial test and whether a subsequent inspection within the year could affect the percentage would be factors to consider.
5. As an alternative to PCFs, the possibility of requiring letters of credit or other financial mechanisms (PCF Bonds) that would provide the DEQ with similar assurances of ready access to funds was discussed:
 - PCF Bonds would be structured differently from current bonds in that they would not require anything more for a demand by the DEQ than what is currently required of PCFs (e.g., no 7 day notice and opportunity for hearing).
 - The use of a standby trust for the proceeds from the PCF Bonds could help expedite payments to contractors, similar to how current disbursements from PCFs are handled.
 - The amount of the PCF Bond could be established as a range (e.g., \$250,000 to \$2,000,000), with the amounts adjusted for inflation every 5 years. The DEQ will query its database for PCF balances, financial assurance amounts, and other factors (e.g., acreage) to determine any obvious trends or patterns that might help to establish the amount of the PCF Bond.
 - Similar to current PCF requirements, the amount of the PCF Bond would not diminish during postclosure.
 - The Comerica Bank representative confirmed that these bonds could function similar to PCFs in providing the DEQ with ready access to cash, based on the proper language.
6. A minimum rating of “A” from Moody’s or Standard and Poors should be considered for financial institutions that issue letters of credit or certificates

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- of deposit or who act as trustee or escrow agent. Similarly, sureties and insurers should have an equivalent minimum AM Best rating.
7. While it is important for the DEQ to oversee unlicensed facilities that utilize waste (registered compost facilities, shingle recyclers, etc.), and a bonding requirement for them would both help ensure the operations were legitimate and protect the taxpayers, identifying all of these facilities and setting an appropriate bonding requirement would be difficult and appears to be beyond the scope of this work group.
 8. The next meeting will be scheduled with a Doodle poll.