Solid Waste Financial Assurance Work Group
May 6, 2011 Meeting Summary

Participants
Dan Batts, Landfill Management
Liz Browne, DEQ
Dawn Cleary, GM
Tom Horton, Waste Management
Ray Ilka, GM – SMCO
Dan Kendall, Kent County DPW
Becky Kocsis, DEQ
Dennis Leonard, DTE Energy
Rhonda Oyer, DEQ
Don Pyle, DSWMA
Dave Rettell, Veolia
Margie Ring, DEQ
Kim Smelker, Granger
Steve Sliver, DEQ

Meeting Materials
- Updated Part 115 financial assurance amendments framework (3/25/11)
- Part 115 Amendments, draft for discussion (3/25/11)
- List of existing type III landfills – increased financial assurance amount if calculated as for Type II (3/25/11)
- List of landfills potentially impacted by proposed minimal $500,000 up-front financial assurance requirement for corrective action (3/25/11)
- FY10 Waste Utilization/Accumulation Sites (3/25/11)

Discussion Points
- Highlights from the ASTSWMO Mid-Year Conference in Denver, which focused on financial assurance.
    - Financial assurance is a hot topic nationally; record attendance for a mid-year national meeting; 100's of participants from nearly every state and territory, the USEPA and other federal agencies, and companies like Waste Management.
    - USEPA's Environmental Financial Assurance Advisory Board. Recommendations on financial test, captive insurance, and scrutinizing cost estimates.
    - Industry wants level playing field; doesn't want to pay more than their fair share of costs.
    - Concept of using financial assurance requirements to incentivize good behavior – i.e., more financial assurance from bad actors.
    - Tennessee has one office for all financial assurances.
    - Bankruptcy cases more prevalent in bad economy.
- Perpetual Care Fund (PCF)
    - DEQ polled other states and none responded back that they had any requirements similar to a PCF, but we learned through the ASTSWMO conference that New Jersey has an interesting approach:

        - Does not have traditional financial assurance requirements for MSW landfills.
        - Since 1982, landfill closure/post-closure escrow accounts funded by pass through fee of $1 (or more) per ton.
        - Third-party custodian of the accounts
        - Disbursements from accounts for reasonable costs incurred, including partial closures
        - Account should be at zero by end of postclosure, surplus goes to GF
        - Financial plan every 2 years to demonstrate enough money will be in account when needed, based on waste receipt and costs for closure and postclosure, and basis for petitioning to assess more than $1 if needed
        - Basically pay-in trust, but NJ does not feel taxpayers are exposed if landfill o/o bankrupts during active life, before account is totally funded
        - Administered by 3 staff and a supervisor
        - 12 active landfills and 80 inactive closing/postclosure
    - None of the other work group members found anything similar to a PCF requirement in other states where they operate landfills, and none are familiar with the New Jersey model. We believe they are all publicly-owned landfills.
    - Industry is interested in options that would not tie up their money in an account that yields very little interest or investment income.
    - The DEQ is open to discussing options that would retain some of the benefits of the current PCF, namely the ready access to funds and stable value throughout postclosure (i.e., not reduced each year during postclosure).
    - In the discussion of options, the DEQ expressed concerns about other financial mechanisms (letters of credit, surety bonds, etc.). The DEQ has had some bad experiences with slow payers on legitimate demands; up to 50% of demands on these other mechanisms have been problematic.
    - The work group needs input from the financial and insurance industry on options/alternatives for financial assurance that both provide ready access to the DEQ and flexibility to the disposal area operators.
- To get input from more of the Type III landfill operators, the DEQ contacted Bill Lievense (representing foundries) and St. Mary's to see if they were interested in participating in the work group. Cortney Schmidt of St. Mary's has joined the group. Dennis Leonard talked with Consumers Energy and left messages with Wisconsin Electric. The electric power industry is not opposed to increasing the amount of financial assurance, but does have concerns with the extent of the increase, if A) the PCF requirement is eliminated, and B) the financial test can be used for more than 70% of the financial assurance.

- Type III landfill operators do support having the ability to use the financial test.
- The DEQ will further evaluate cost estimates for Type III landfills to see if there is a way to simplify the cost estimate calculation (i.e., similar to current $20,000 per acre amount), whether there are distinct groupings of Type IIIs for cost estimating purposes, and whether there is a way to distinguish between captive and noncaptive landfills for cost estimating.
- The proposed upfront financial assurance for corrective action characterization, assessment, and RAP development are difficult to quantify and probably hard to justify. The active landfills that have a confirmed release are likely to pursue the corrective action program in a timely manner in order to stay in compliance and be licensable. It would likely be difficult to obtain upfront financial assurance from closed landfills because they do not have the incentive of a permit or license. Additionally, PCF monies are available for corrective action.
- The next meeting will be scheduled based on a Doodle poll of members.