

**Solid Waste Financial Assurance Work Group
July 14, 2011 Meeting Summary**

Participants

Dan Batts, Landfill Management
Noel Bush, City of Midland Landfill (conference call)
Dawn Cleary, GM
Ken Diehn, NewPage Corporation (conference call)
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
Richard Menard, Verso Paper (conference call)
Rhonda Oyer, DEQ
Rich Paajanen, Waste Management (conference call)
Don Pyle, DSWMA (conference call)
Margie Ring, DEQ
Cortney Schmidt, St. Mary's Cement
Kim Smelker, Granger
Steve Sliver, DEQ

Meeting Materials

- Draft June 17, 2011, meeting summary.
- Updated Part 115 financial assurance amendments framework (3/25/11)
- Part 115 Amendments, draft for discussion (6/17/11)
- Proposed structure for implementing new requirements at existing type III landfills
- DEQ draft structure for financial mechanisms
- List of issuers of letters of credit

Discussion Points

- The DEQ will be suspending work with the Solid Waste Advisory Committee until it completes the “boilerplate report” required under the fiscal year 2012 appropriations act. The boilerplate report is due to the Legislature by June 30, 2012, and must address implementation of the Solid Waste Policy and long-term funding for the Solid Waste Program.
- The Solid Waste Financial Assurance Work Group (SWFAWG) will continue, and we intend to have a draft report developed in September 2011.
- The Environmental Rules Advisory Committee, Resource Management Subcommittee Issues List includes comments about some of the proposals being discussed in the SWFAWG. The DEQ intends to respond that the SWFAWG is considering possible statutory changes and has not developed any final recommendations yet.

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- The June 17 meeting summary was edited.
- The list of banks that provide letters of credit was reviewed. Industry remains concerned with the indemnification agreements that the banks require when issuing letters of credit, and wants to explore whether there is a way to minimize the need for these side-bar agreements.
- The DEQ provided a structure of desired aspects for financial mechanisms that industry can share with their bankers to see if other options might be available.
- Kim Smelker found a representative of banks that may be interested in helping the SWFAWG: Mr. Michael Schmidt of Comerica Bank's Environmental Services Group.
- A proposed a framework for how to address financial assurance for historical closed areas (closed prior to 1979, closed prior to 1993, etc.) at Type III landfills was discussed. Additional clarification of what is meant by "closed" is needed. The statute amendments also need to include effective dates some time beyond enactment so industry can have time to decide how to manage (e.g., close) cells, conduct any necessary closure activity, and obtain a new license reflecting any changes before the new requirements become effective.
- It was suggested that the financial assurance requirements may need to be structured differently for the coal ash landfills, which can be large, historical monofills that include areas filled and "closed" prior to the effective date of the regulations, but that remain part of the licensed area because of long-term disposal plans. It may be difficult to make a regulatory distinction between contiguous cells due to the lack of a cap between them. Additionally, while some areas may be "closed," the entire landfill remains covered by the groundwater monitoring system.
- It was noted that the option of a site-specific cost estimate could reduce the amount of financial assurance required at some Type III landfills because it could take into account the presence of interim cover.
- The Part 115 trust fund apparently does not mesh well with the Public Service Commission requirements for addressing closure and postclosure costs at coal ash landfills. It was hoped that the requirements would be similar and therefore satisfying one would satisfy the other.
- Industry remains concerned with tying up money in the perpetual care funds, and whether that burden can be reduced will be an important consideration in gaining industry support for amendments to the financial assurance requirements.
- The ability of Type III landfills to use the financial test is also important. The current limitation on the use of the financial test for no more than 70 percent of the total financial assurance amount apparently is a Michigan requirement that is not based in federal regulations. If the financial test could be used for 100 percent of the financial assurance amount, then proposed increases in that amount could be readily covered by some of the Type III landfill operators (e.g., major electric utilities). Should there be

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- a tiered approach for the financial test? A notification requirement for when the financial test criteria are no longer met is also needed.
- It was noted that we need to add to the proposed amendments language addressing bankruptcy of the owner or operator, and also of the institutions that issue financial mechanisms.
 - Should the 30-year postclosure period be extended? At the end of postclosure, the financial assurance requirements end if there are no corrective actions required, exposing taxpayers to potential costs for cap maintenance and other ongoing monitoring and maintenance activity. Wisconsin extended its period to 40 years. The state does not have a fund to cover these costs if the owner or operator is unable to.
 - Further discussion is needed on whether and how to replenish the state's perpetual care account. If the individual landfill perpetual care funds were eliminated, would industry be interested in having a portion (e.g., 10 percent) of them transferred (donated) to the state's perpetual care account? The state account of last resort is depleted. Would the loss of a portion of the perpetual care funds be offset by having the money freed up now rather than 30 or more years from now?
 - The next meeting is scheduled for August 24, 2011, 9:30 a.m.