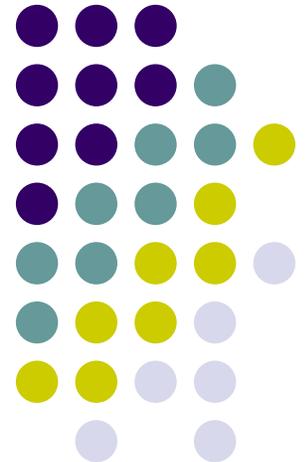


Financial Responsibility

National Enforcement Priority
USTs





Financial Responsibility: Overview

Discussion Topics

- Significance of Financial Responsibility
- Enforcement: Financial Responsibility National Priority
- Underground Storage Tanks: Evaluation Phase
- Financial Responsibility: Activities in Addition to OECA's National Priority

Financial Responsibility: Significance



Congressional Intent

- Nearly all industries operate with finite physical lives; eventually they need to close.
- To protect human health and the environment from negative impacts, Congress often mandates owners and operators to provide guarantees for safe and proper closure of these facilities.
- Under the Resource Conservation and Recovery Act (RCRA), for example, Congress specifically mandated by law that an owner and operator provide financial responsibility.

Financial Responsibility: Significance



Congressional Intent (cont'd)

- The intent of Congress is to minimize the number of facilities that are orphaned or abandoned.
- Financial responsibility requirements create a financial incentive for owners and operators to locate, design and operate facilities in a manner that will minimize releases.



Financial Responsibility: Significance

Case Law

- Congressional Intent is mirrored in federal case law:
 - “Important components of RCRA program to protect human health and environment . . . Also act as inducement to owner/operator to properly maintain the hazardous waste facility.”
 - Financial responsibility requirements are more than technical paperwork violations.
 - Requirements reduce the risk that sufficient funds will not be available after shutdown of facility when the owner/operator may not have the economic ability or incentive to devote resources.
- Courts have upheld the importance and financial responsibility and the implementing regulations.
 - Insurance UST case -- Zurich

Financial Responsibility: National Enforcement Priority



Background

- In December 2003, EPA published a notice in the Federal Register seeking public comment on potential compliance and enforcement priorities for FY2005-07, included within those suggested priorities was financial responsibility.
- In January 2004, EPA decided to evaluate whether financial responsibility should become a priority and has used FY2005 to explore options, approaches, and strategies that could be used.
- In March 2005, EPA identified financial responsibility as an enforcement office priority for FY2006-07.

Financial Responsibility: National Enforcement Priority



Background (cont'd)

- States, through ASTSWMO, urged OECA to adopt financial responsibility as a national enforcement priority.
- Financial responsibility cuts across multiple environmental statutes; OECA is taking a phased approach to implementation of this priority.
 - OECA is first looking at financial responsibility obligations for RCRA closure and post-closure, RCRA corrective action, CERCLA, and TSCA.
 - OECA is evaluating UST and UIC programs
- As with virtually all enforcement priorities, OECA's implementation includes specific goals, targeting of enforcement resources, a communication strategy, and a workforce deployment component.

Financial Responsibility: National Enforcement Priority



Background (cont'd)

- All 10 Regions are participating in the priority.
- Included in OECA's efforts is providing resources and training to enhance Regional and State capabilities (e.g., cost estimating software training).
- A short summary of the strategy is posted on the OECA website.
- EPA will continue to address financial responsibility as a national priority in FY'08-FY'10.

Financial Responsibility: National Enforcement Priority



Preliminary Financial Assessments (PFAs)

- PFAs indicate potential non-compliance and help prioritize case development.
- PFAs provides factual information about financial responsibility. For example:
 - Can provide number of instruments being utilized under each type of mechanism.
 - Can provide costs being covered by the instruments (caveat: information from face value of the instrument or provided by the regulated entity).

Financial Responsibility: National Enforcement Priority



Preliminary Financial Assessments (cont'd)

- Available information at the time of the reviews may not be complete to make a compliance determination; resources needed to follow-up.



Financial Responsibility: National Enforcement Priority



- Completed PFAs
 - Connecticut (114)*
 - New Jersey (90)
 - New York (85)*
 - Puerto Rico (17)*
 - Maryland (17)
 - Alabama (40)
 - Georgia (49)
 - South Carolina (38)*
 - Iowa (19)*
 - Missouri (48)*
 - Colorado (15)
 - Arizona (12)
 - California (93 – partial)
 - Kentucky (33)
 - Louisiana (55)
- Completed PFAs (cont'd)
 - Alaska (1)
 - Oregon (6)
 - Washington (25)
 - North Dakota (9)
 - Idaho (10)
 - Ohio (111)
 - Illinois (130)
- PFAs To Be Undertaken
 - Texas
 - Region 4 State
 - Region 3 State
 - Region 8 State

Note: 25 States by the end of FY'07

Financial Responsibility: National Enforcement Priority



Lessons Learned From PFAs

- PFAs have preliminarily identified certain financial risks associated with the financial mechanisms.
- Follow-up by Regions and States have lead to the identification of non-compliance, implementation, and regulatory issues.
- Non-compliance issues, for example:
 - failure to timely submit and update mechanisms;
 - insufficient submissions;
 - trust fund not fully funded; and
 - failing the financial test.

Financial Responsibility: National Enforcement Priority



Lessons Learned From PFAs (cont'd)

- Implementation issues, for example:
 - file management;
 - correction of non-compliance with no record in RCRAInfo;
 - adequacy of cost estimates.
- Regulatory issues, for example:
 - auditor's special report;
 - providing timely notification of non-compliance.

Financial Responsibility: USTs



OECA Evaluation

- Coordinate with OUST, Regions and States.
 - Florida and Missouri
- Preliminary discussions have focused on compliance assistance and a measured response through traditional enforcement providing.
- Focus in States which do not have a State fund.

Financial Responsibility: USTs



OECA Evaluation (cont'd)

- Compliance Assistance
 - Office of Compliance will coordinate with OUST, Regions and States
 - Preliminary discussions have focused on the financial mechanism -- insurance
 - Compliance assistance would be targeted to small owners and operators (e.g., lessons learned from Florida)
- Traditional Enforcement
 - Evaluation -- PFAs
 - Lessons learned from Missouri
 - Lessons learned from RCRA Subtitle C and TSCA

Financial Responsibility: Activities In Addition to OECA's National Priority



- In addition to EPA identifying financial responsibility as a national enforcement priority, other activities have been undertaken or are underway which take a look at financial responsibility.
- EPA's Office of Inspector General
 - RCRA Financial Assurance for Closure and Post-closure (March 2001)
 - Continued EPA Leadership Will support State Needs for Information and guidance on RCRA Financial Assurance (September 2005)
- U.S. General Accountability Office
 - Leaking Underground Storage Tanks: EPA Should take Steps to Better Ensure the Effective Use of Public Funding for Cleanups (February 2007)
 - Environmental Liabilities: EPA Should Do More To Ensure That Liable Parties Meet Their Cleanup Obligations (August 2005)
 - Deep injection Wells: EPA Needs to Involve Communities Earlier and Ensure That Financial Assurance Requirements Are Adequate (June 2003)

Financial Responsibility: Activities In Addition to OECA's National Priority



Leaking Underground Storage Tanks

- Focus of GAO Report on cleanups, state funds and LUST
- Discussion of financial responsibility
 - 23 States reported cases of inadequate financial responsibility coverage
 - Annual reviews are not undertaken
 - Checking financial responsibility during inspection helps ensure that the o/o maintains adequate financial responsibility

Financial Responsibility: Activities In Addition to OECA's National Priority



Leaking Underground Storage Tanks (cont'd)

- GAO provided the following recommendations
 - Ensure states verify financial responsibility coverage on a regular basis
 - EPA needs to provide guidance and assistance