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ABILITY TO PASS THE RCRA FINANCIAL TEST FOR ENVIRONMENTAL
OBLIGATIONS

October 7, 1994

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

Mr. A. E. Moffitt, Jr.
Vice President, Safety, Health, and Environment
Bethlehem Steel Corporation
Bethlehem, Pennsylvania 18016

Dear Mr. Moffitt:

Thank you for your letter, dated September 22, 1994, regarding a recent statement issued by the Financial Accounting Standards Board (FASB) that affects Bethlehem Steel Corporation's ability to pass the RCRA financial test for its environmental obligations.

As your letter states, FASB statement 106: Accounting for Post-Retirement Employee Benefits Other than Pensions (OPEB), requires that employers recognize these benefits after December 15, 1993 by using either the "immediate" or "delayed recognition" alternative. Your specific concern is that since Bethlehem Steel Corporation has elected to use the "immediate recognition" method in accounting for OPEB, it may not be able to pass EPA's financial test for all of its environmental obligations. To address this concern, you propose that, for Security and Exchange Commission purposes, Bethlehem Steel Corporation continue to use the "immediate OPEB recognition" method, but for purposes of the Agency's financial test, Bethlehem Steel Corporation could use the "delayed OPEB recognition" method. You state that when Bethlehem Steel Corporation uses the "delayed OPEB recognition" method, it can pass the financial test for all of its environmental obligations.

As you indicate in your letter, the RCRA subtitle C financial test under sections 40 CFR 264.143(f), 264.145(f), and 264.147(f) requires that, as part of the test, the owner or operator's Chief Financial Officer must submit a certification that "figures for the

following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest complete fiscal year..." (see section 264.151(f) for the complete language of the certification). The owner or operator must also submit a certification from his or her independent certified public accountant confirming the Chief Financial Officer's certification. In your letter, you asked for EPA's views on whether a firm's Chief Financial Officer could make the required certification, if the firm's audited year-end financial statement calculated net worth by the "immediate OPEB recognition method," but the figures in the financial test submission are based on the "delayed recognition method."

After review of the questions you raised, we have concluded that your proposal is within the scope of EPA's subtitle C regulations, since both the "immediate" and "delayed" recognition methods are allowed under FASB 106. Furthermore, we agree that, under the circumstances you describe, the Chief Financial Officer could reasonably make the required certifications under the regulations, on the grounds that the alternative net worth calculation used for the RCRA financial test is derived from the audited, year-end financial statements, or would have been used to prepare the financial statement if the company had chosen to use the "delayed recognition" approach.

This letter provides EPA's interpretation of the Federal RCRA regulations. As you know, most States are authorized to carry out the RCRA hazardous waste program, and these states may choose to impose more stringent requirements than does the Federal program. Therefore, you should also contact the authorized States in which your facilities are located to determine whether your proposal is acceptable under authorized State law.

If you have any questions regarding this letter, please feel free to contact Matthew Hale at (703) 308-8404.

Sincerely,

Michael Shapiro, Director
Office of Solid Waste