

PPC 9477.1986(09)

LIABILITY REGULATIONS

July 24, 1986

Mr. Gettinger
President
Midwest Oil Refining Co.
1200 Walton Rd
St. Louis, Missouri 63114

Dear Mr. Gettinger:

Thank you for your letter of June 25 addressing the effects of the constrained insurance market on your business. Although we are aware of the difficulties in obtaining liability insurance, EPA believes liability regulations are desirable for several reasons. First, the liability requirements assure that funds will be available for third parties seeking compensation for bodily injury and property damage arising from operation of hazardous waste management facilities. Second, without liability coverage, many commenters to EPA believe that there will be lessened public confidence in and greater opposition to proposed and existing hazardous waste management facilities. Third, these regulations have the potential for inducing improved design and operation of the facility resulting from the incentive of lower insurance premiums and the oversight that insurers might provide over facility operations. Finally, when EPA published a proposal on various methods of addressing the constrained insurance market on August 21, 1985, we received many comments indicating continued support for the liability requirements.

While I understand that it is difficult to pay for a risk assessment without prior assurance that insurance coverage will be provided, we understand that most insurers will insist on conducting a risk assessment before they make a decision to offer coverage or not. We believe that this is sound insurance practice. In addition, risk assessors and insurance companies have quoted risk assessment costs as generally falling between \$5,000 and \$25,000; your \$5,000 cost therefore appears to be at the low end.

In response to this situation, EPA has several ongoing efforts. First, the Agency developed the February 25, 1985 list of Environmental Impairment Liability providers, a copy of which you obtained and enclosed in your letter. We will update this list soon.

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Second, we expect to publish final regulation allowing the use of a corporate guarantee as a method of demonstrating compliance with the liability requirements. This regulation was signed by the Administrator on July 3 and should be published very soon.

Third, we have begun work on developing a proposal to authorize the use of other instruments to demonstrate compliance. We expect to publish the proposal in approximately one year.

Fourth, the Federal regulations allow both the state assumption of this requirement (¶¶264.150 and 265.150) and the use of state-required instruments (¶¶264.149 and 265.149), upon meeting certain conditions. You may wish to pursue this further.

Finally, I urge you to consult with the appropriate officials in Missouri, since the state has authorization to administer these liability insurance regulations in lieu of the EPA.

With regard to your comment on the effect of a possible listing of used oil as hazardous waste, we received many similar comments on our November 29, 1985, proposed rule. Although no final determination has been made yet on this issue, these comments will be fully considered and addressed before the issuance of the final rule.

I hope you find this information helpful.

Sincerely,

J. Winston Porter
Assistant

Administrator