

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460**

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Ms. Billie S. Flaherty  
Beazer East, Inc.  
436 Seventh Avenue  
Pittsburgh, Pennsylvania 15219

Dear Ms. Flaherty:

Elizabeth Cotsworth has requested that I respond to your March 19, 1997 letter to her on our interpretation of 40 CFR 264.151(k). That letter raised two questions on EPA's interpretation of the letter of credit requirements for liability coverage, specifically the words "annual aggregate."

Your letter states that you currently have a letter of credit from Chase Manhattan Bank in the amount of \$12 million to satisfy the third-party liability requirements of the State of Pennsylvania. This letter of credit was issued on December 26, 1996 for a period of one year. Chase Manhattan has questioned whether it is liable for \$12 million for the last six days of 1996 and an additional \$12 million for the remaining 359 days of 1997 for which financial assurance is being provided. EPA interprets the amount as not increasing when the period of time for the letter of credit spans a new calendar year. EPA interprets the words "annual aggregate" to refer to the amount for the one year period of the letter of credit.

The other issue is whether the extension of a letter of credit for an additional year increases the amount of the letter of credit. In particular, does the extension of the letter of credit add to the amount of the bank's exposure? EPA does not interpret the automatic renewal provisions as increasing the amount of the letter of credit in the renewal period above the annual aggregate amount. If, however, a claim is paid under a letter of credit, in the succeeding renewal period the amount of the letter of credit would have to increase to the level required as the annual aggregate (assuming that the letter of credit is the only mechanism used to demonstrate financial assurance for third party liability). Thus, in any given year, the exposure of the issuer of the letter of credit is limited to the amount of the annual aggregate.

RO 14250

In providing this information, EPA notes that it is giving its interpretation of the Agency's requirements. In responding to your letter, we have not reviewed the financial assurance requirements for Pennsylvania or other jurisdictions with State-administered financial assurance programs. Further, under the Resource Conservation and Recovery Act, States may have more stringent requirements than EPA's. If you should have further questions on this matter, please call Dale Ruhter of my staff at (703) 308-8192.

Sincerely,

Stephen Heare, Acting Director  
Permits and State Programs Division