

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

FEB 27, 1997

**Memorandum**

**Subject:** Obsolete Language in the Financial Test for Subtitle C Treatment Storage and Disposal Facilities

**From:** Elizabeth A. Cotsworth, Acting Director  
Office of Solid Waste

**To:** Senior RCRA Policy Advisors  
RCRA Enforcement Managers

This memorandum provides guidance to Regions and States on an acceptable form for the independent certified public accountant's (CPA's) special report that owners or operators must submit when using the financial test and corporate guarantee to comply with EPA's financial assurance regulations. This guidance is necessary because the regulatory requirement (that the CPA's report provide "negative assurance") has become inconsistent with current professional auditing standards.

Background on the Regulations

Subpart H of 40 CFR parts 264 and 265 allows owners and operators of RCRA treatment, storage, and disposal facilities to use a financial test or a corporate guarantee to demonstrate financial assurance. In using the financial test or corporate guarantee, the owner or operator's chief financial officer (CFO) must submit (1) a letter using the language specified in 40 CFR 264.151 to report financial information and test results, (2) a copy of the firm's audited year end financial statement, and (3) a copy of a special report from a CPA. The CPA's special report presents the procedures performed and findings based on the CPA's comparison of the data which the chief financial officer's letter specifies as coming from the independently audited year end financial report with the amounts in the audited financial statements. The regulations also require the CPA's report to state that "In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted" (see, for example, 40 CFR part 264.143(f)(3)(iii)(B)). This is referred to by the auditing profession as a "negative assurance."

The CFO's letter must discuss any adjustments made in the data to report the results of the financial test that differ from the amounts in the audited financial statements. The purpose of the CPA's special report on the CFO's letter is to ensure that information provided in the financial test

is consistent with information in the firm's audited financial statements. This is particularly important when information cannot be checked directly against the financial report because of adjustments by the chief financial officer. An allowable adjustment by the chief financial officer for the Subtitle C financial test was discussed in the preamble to the proposed corporate financial test for municipal solid waste landfills (59 FR 51530, October 12, 1994). The preamble states that in reporting for "post-retirement benefits other than pensions" (e.g. health benefits for a company's retirees), the Financial Accounting Standards Board Statement 106 allows either an immediate or deferred recognition of these benefits as liabilities. Since either method is allowable under generally accepted accounting principles for financial reports, EPA will allow companies to use the immediate recognition method for their financial reporting to the Securities and Exchange Commission and the delayed method for purposes of the financial test.

#### New Professional Standards for CPAs Do Not Permit Expressions of Negative Assurance

In performing audits and other types of work, CPAs must follow certain professional standards. The American Institute of Certified Public Accountants, Inc.'s (AICPA's) Statement on Auditing Standards no longer permits independent auditors to express negative assurance (i.e. "no matter came to his attention which caused him to believe that the specified data should be adjusted."). The new standards require the auditor to present the results of procedures performed in the form of findings, and explicitly disallow issuing "negative assurance." This has left many accountants, corporations and States uncertain how to fulfill the regulatory requirement for using the financial test.

#### Use of a Report from an "Agreed Upon Procedure"

The Agency intends to change the regulations so that they conform to the new professional auditing standards. Until that rulemaking is completed, in addition to, or in lieu of, a CPA report stating that "no matter came to his attention," EPA will accept a CPA's report describing the procedures performed and related findings, including whether or not there were discrepancies found in the comparison, based on an agreed-upon procedures engagement performed in accordance with AICPA's Statement on Auditing Standards No.75, Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts or Items of a Financial Statement. (In an agreed-upon procedures engagement an accountant is engaged by a client to issue a report of findings based on specific procedures performed on the specific items of a financial statement.) The Agency will regard this report as satisfying the requirements of the financial test or corporate guarantee for a special report by an independent CPA on the CFO's letter.

Please distribute a copy of this memo to your authorized states. Also, if you or your authorized States have any questions on this issue, please feel free to contact Dale Ruhter at (703) 308-8192.

cc: Steven Herman, OECA  
Tom Kennedy, ASTSWMO

