

LIABILITY COVERAGE REQUIREMENTS WITH RESPECT TO LOSS OF
INTERIM STATUS

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

APR 1 1987

Honorable Robert Dole
United States Senator
636 Minnesota Avenue
Kansas City, Kansas 66101

Dear Senator Dole:

Thank you for your letter of March 6, 1987, concerning the comments of your constituent, Mr. Gregory Shondell, Secretary Treasurer of Heathwood Oil Company. Mr. Shondell, had written to you expressing concerns with hazardous waste financial responsibility regulations under the Resource Conservation and Recovery Act (RCRA).

A particular concern of Mr. Shondell with respect to his parts cleaning business, is the reluctance of his insurance company, Federated Insurance, to provide either a Hazardous Waste Facility Liability Endorsement or a Certificate of Liability Insurance to the Kansas Department of Health and Environment (KDHE). Either of these documents, if submitted, is sufficient to indicate Heathwood Oil Company's compliance with RCRA liability coverage requirements. The Endorsement and the Certificate were developed specifically to ease compliance with the RCRA liability coverage requirements. Insurance companies can rely on the standard language of the Endorsement or Certificate rather than having to assure that the language of individual policies meet the regulatory requirements. At the same time, for regulatory and enforcement authorities who must evaluate facility compliance with various design, operating and performance requirements, compliance with the liability coverage can be easily verified. We are not aware of any insurance company's reluctance to provide the Endorsement or Certificate when the policies

being issued fully comply with the RCRA liability coverage requirements.

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As stated above, authority for the RCRA program currently belongs to the State of Kansas. Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their own hazardous waste programs. Kansas has been authorized since 1985. As such, Kansas imposes regulatory requirements that are equivalent or more stringent than those of the Federal RCRA program. As part of its authorized hazardous waste program, Kansas relies on receipt of the Endorsement or Certificate as the mechanism for indicated compliance with its liability coverage regulations.

We understand that Mr. Shondell's situation is currently under review by the KDHE. A meeting was held between KDHE officials, Mr. Shondell, and Federated Insurance representatives to review possible deficiencies in the coverage provided and suggest changes that may bring Heathwood Oil Company back into compliance with Kansas regulations. A final decision is pending.

There is concern on the part of KDHE that one existing policy for Heathwood Oil Company does not cover all its hazardous waste operations. Our financial responsibility expert, Mr. Mike Wolfram (913-236-2800) in EPA's Region VII office, is also reviewing the Federated Insurance policy and will be available to participate with KDHE officials and Mr. Shondell's insurance company representatives to discuss the policy in question.

Mr. Shondell also commented on the difficulty of securing liability insurance. The EPA is aware of the constrained environmental liability insurance market and is sensitive to the problem for owners and operators of hazardous waste management facilities seeking to comply with RCRA. Enclosed for Mr. Shondell's information is a list of companies that offer Environmental Impairment Liability (EIL) Insurance.

There are changes taking place in the insurance marketplace that are favorable to the regulated community. For

instance, Business Insurance, the trade publication of the insurance industry, reported in its December 8, 1986, issue that the two major vendors for EIL insurance are looking to expand the volume of EIL business they write. In addition, risk retention groups are being formed to offer EIL coverage. The Agency has also made efforts to offer relief to RCRA facilities unable to secure insurance. On July 11, 1986, EPA promulgated a rule allowing an alternative instrument, the parent corporation guarantee, to be used to demonstrate financial assurance for liability coverage. The Agency is also developing another rule that will authorize more instruments for providing liability coverage and will also amend current insurance requirements that may be limiting the availability of insurance coverage to hazardous waste facilities.

I hope this information on Mr. Shondell's situation and on liability insurance is useful. If I can be of any further assistance, please let me know.

Sincerely,

Original Document signed

J. Winston Porter
Assistant Administrator

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