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FACILITIES UNABLE TO MEET LIABILITY COVERAGE REQUIREMENTS

November 10, 1987

Honorable Nancy Johnson
House of Representatives
Washington, D.C. 20515

Dear Ms. Johnson:

In my letter to you of March 19, 1987, I indicated that the Office of Solid Waste was attempting to identify how many land disposal facilities subject to the 1988 permitting deadline were unable to meet the RCRA liability coverage requirements and, among these, how many faced permit denial solely because of this non-compliance.

I am happy to be able to share the results of our inquiry with you. Information from our Regions indicates that the number of existing land disposal facilities out of compliance with the RCRA liability coverage requirement (40 CFR Part 264.147) for facilities totals no more than 19 and may, in fact, be as few as 13. Unfortunately, difficulties in clearly separating liability coverage violations from non-compliance with other RCRA financial responsibility regulations prevents me from being more precise.

In regard to the number of land disposal facilities for which liability coverage is the only impediment to permit issuance, according to the best judgment of our Regional experts, only one facility falls into this category. The remaining 12-18 facilities are either unable to comply with other RCRA permit requirements or else are expected to decide to close instead of pursuing an operating RCRA permit.

This information is good news to me and, I hope, also to you. The results indicated that most land disposal facilities actively seeking a RCRA operating permit at this time have made concerted effort to acquire insurance or otherwise demonstrate their ability to provide coverage for third-party liability. EPA's Regional offices, the States, and my own office continue to work with non-complying RCRA facilities to secure the necessary liability coverage to comply with current regulations.

In our meeting of late March, you also inquired as to the mechanisms that facilities rely on for demonstrating liability coverage. Although not all of our Regions have been able to provide us this information yet, I can share some illustrative information. Region I, for instance, reported that six out of eight existing land disposal facilities seeking a RCRA permit use the financial test to comply with §264.147 liability coverage requirements; the remaining two facilities use insurance policies. In another EPA region, almost half (47%) rely upon the financial test while the rest are either insurance (43%) or the corporate guarantee (10%), which became effective as a liability coverage instrument in September 1986. I will forward a more complete tabulation of this information as soon as it is available.

Please feel free to contact me if I can provide further information on this issue.

Sincerely,

J. Winston Porter
Assistant Administrator

Enclosure