9477.1990(02)

FINANCIAL RESPONSIBILITY REQUIREMENTS - CERTIFYING CLOSURE

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MAY 28 1990

MEMORANDUM

SUBJECT: Post-Closure Notices

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste (OS-300)

TO: Robert L. Duprey, Director
Hazardous Waste Management Division (8HWM-RM)

This responds to your memorandum dated 26 March 1990, in which you requested modification of the RCRA regulations regarding release of owners and operators from financial responsibility requirements. You expressed concern that owners and operators do not comply with the deed notification requirements of the regulations, and that because such a deed notation has a negative effect on the value of the property, there is a strong incentive for them not to comply. You suggested that the regulations should explicitly require such compliance with the deed notice requirements as a condition for release from financial responsibility requirements.

As you discussed in your memorandum, sections 264.119 and 265.119 require owners and operators to record notations on the property deeds within 60 days of certifying closure. The deed notification must specify that: (a) the land has been used to manage hazardous waste, (b) use of the land is restricted under 40 CFR Subpart G regulations, and (c) a record of the hazardous wastes disposed of on the site has been submitted to the local zoning authority. At the same time, sections 264.143(i) and 265.143(h) require the Regional Administrator to release owners and operators from financial assurance requirements within 60 days of receiving certification that final closure has been completed in accordance with the approved closure plan. The certifications mentioned in sections 264.143(i) and 265.143(h) are those in sections 264.115 and 265.115. Thus, there is no

explicit language stating that release from financial assurance requirements is conditioned upon a demonstration that the owner or operator has fully complied with the requirements of sections 264.119 and 265.119.

We plan to amend the regulations to clarify that release of financial assurance is conditioned on full compliance with sections 264.119 and 265.119 in the next available rulemaking vehicle. Although enforcement is an available option to obtain compliance with sections 264.119 and 265.119, we encourage you to incorporate the requirements of sections 264.119 and 265.119 into closure plans to avoid the need for such enforcement action. This will ensure that compliance with those sections will be complete before the release from financial responsibility.

If you have any questions or comments regarding this memorandum, please feel free to contact Ed Coe at FTS 382-6259.