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FINANCIAL ACCOUNTING STANDARDS BOARD STATEMENT 106
AND ITS AFFECTS ON THE RCRA FINANCIAL TEST

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

April 1, 1994

Mr. Torger Dahl
Environmental, Health, and Safety Legal Staff
Eastman Kodak Company
343 State Street
Rochester, New York 14650-0207

Dear Mr. Dahl:

Thank you for your letter to Matthew Hale, dated March 3, 1994 regarding a recent statement issued by the Financial Accounting Standards Board (FASB) that affect Kodak's ability to pass the RCRA financial test for its environmental obligations.

As your letter states, FASB statement 106: Accounting for Post-Retirement Employee Benefits Other than Pensions (OPEB), requires that employers recognize the benefits after December 15, 1993 by using either the "immediate" or "delayed recognition" alternative. Your specific concern is that since Kodak has elected to use the "immediate recognition" method in accounting for OPEB, it may not be able to pass EPA's financial test for all of its environmental obligations. To address this concern, you propose that, for Security and Exchange Commission purposes, Kodak continue to use the "immediate OPEB recognition" method, which it calls an alternate net worth calculation. You state that when Kodak uses the "delayed OPEB recognition" method, it can pass the financial test for all of its environmental obligations.

As you indicate in your letter, the RCRA subtitle C financial test under sections 40 CFR 264.143(f), 264.145(f), and 264.147(f) requires that, as part of the test, the owner or operator's Chief Financial Officer must submit a certification that "figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the

latest complete fiscal year . . ." (see section 264.151(f) for the complete language of the certification). The owner or operator must also submit a certification from his or her independent certified public accountant confirming the Chief Financial Officer's certification. In your letter, you ask for EPA's views on whether a firm's Chief Financial Officer could make the required certification, if the firm's audited year-end financial statement calculated net worth by the "immediate OPEB recognition method," but the figures in the financial test submission are based on the "delayed recognition method."

After a careful review of the materials you provided, we have concluded that your proposal is within the scope of EPA's subtitle C regulations, since both the "immediate" and "delayed" recognition methods are allowed under FASB 106. Furthermore, we agree that, under the circumstances you describe, the Chief Financial Officer could reasonably make the required certifications under the regulations on the grounds that the alternative net worth calculation used for the RCRA financial alternative net worth calculation used for the RCRA financial test is derived from the audited, year-end financial statements, or would have been used to prepare the financial statement if the company had chosen to use the "delayed recognition" approach.

This letter provides EPA's interpretation of the Federal RCRA regulations. As you know, most States are authorized to carry out the RCRA hazardous waste program, and these States may choose to impose more stringent requirements than does the Federal program. Therefore, you should also contact the authorized States in which your facilities are located to determine whether your proposal is acceptable under authorized State law.

If you have any questions regarding this letter, please feel free to contact Matthew Hale at (703) 308-8404.

Sincerely,
Michael Shapiro, Director
Office of Solid Waste