NRC FORM 464 Part I
(6-1998)

U.S. NUCLEAR REGULATORY COMMISSION

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

FOIA/PA	RESPONSE NUMBER
99-377,OO-219,00-257	14

RESPONSE TYPE: ☐ FINAL ☑ PARTIAL

REQUESTER: Ms. Kimberly Boggiatto

DATE: AUG 04 2000

PART I. -- INFORMATION RELEASED

☐ No additional agency records subject to the request have been located.

☐ Requested records are available through another public distribution program. See Comments section.

☐ APPENDICES: Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.

☑ APPENDICES X,Y: Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.

☐ Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.

☑ APPENDICES X,Y: Agency records subject to the request are enclosed.

☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.

☑ We are continuing to process your request.

☐ See Comments.

PART I.A -- FEES

AMOUNT * $

* See comments for details

☐ You will be billed by NRC for the amount listed.

☐ You will receive a refund for the amount listed.

☐ None. Minimum fee threshold not met.

☐ Fees waived.

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

☐ No agency records subject to the request have been located.

☑ Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.

☑ This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed [signature]

NRC FORM 464 Part II (6-1998) U.S. NUCLEAR REGULATORY COMMISSION	FOIA/PA	DATE
RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST	99-377,00-219,00-257	AUG 04 2000

PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES Y

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- [ ] Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- [ ] Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- [ ] Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
  - [ ] Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
  - [ ] Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
  - [ ] 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- [ ] Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
  - [ ] The information is considered to be confidential business (proprietary) information.
  - [ ] The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).
  - [ ] The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- [x] Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
  - [x] Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
  - [ ] Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
  - [x] Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- [ ] Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- [ ] Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
  - [ ] (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
  - [ ] (C) Disclosure would constitute an unwarranted invasion of personal privacy.
  - [ ] (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
  - [ ] (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
  - [ ] (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- [ ] OTHER (Specify)

PART II.B -- DENYING OFFICIALS

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL EDO	SECY	IG
Lawrence J. Chandler	Associate General Counsel for Hearings, Enforcement and Administration	App. Y		✓	

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

FOIA-99-377
FOIA-00-219
FOIA-00-257

APPENDIX X

RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with*)

NUMBER	DATE	DESCRIPTION/PAGES
1.	11/24/97	E-Mail from R. Fonner to M. Fliegel, subject: Senator Reid Response - Atlas Reply, (1 pg.)
2.	4/16/99	E-Mail from M. Schwartz to K. Stablein, subject: Atlas letter, (1 pg.).
3.	8/9/99	.Memo to J. Turdici from J. Gray, subject: Exemption of Fees for Atlas Corp. and Successor Trustee/Licensee of the Moab Mill Site, (22 pgs.).

Re: FOIA-99-377
FOIA-00-219
FOIA-00-257

APPENDIX Y

DOCUMENTS BEING RELEASED IN PART

NUMBER	DATE	DESCRIPTION/EXEMPTION
1.	7/15/97	Memo to K. Cyr from F. Cameron, subject: Effect of a Bankruptcy Filing on Atlas Corporation's Surety Bond and Standby Trust Fund, (2 pgs.) - ***PORTIONS WITHHELD EX. 5,*** attaching Memo dated 6/14/96 to S. Horn from C. Dean and P. Bailey, subject: Tax Considerations in Provision of Funds by Corporate Parent for Decommissioning and Cleanup of Facility Owned by Subsidiary, (10 pgs.) - ***RELEASED,*** attaching Federal Register Notice Vol. 46 No. 7, (5 pgs.) - ***RELEASED.***
2.	3/3/98	Memo to J. Holonich from S. Treby, subject: Annual Surety Review for Atlas Corporation, (3 pgs.) - ***PORTIONS WITHHELD EX. 5.***

From: Robert Fonner
To: TWD2.TWP7(MHF1) M. Fliegel
Date: 11/24/97 1:47pm
Subject: Sen. Reid response - Atlas -Reply

I have reviewed the response to Senator Reid and have no legal objection.

9802230278 980116
CF ADOCK 04003453
CF

XII

From: Maria Schwartz
To: N. King Stablein
Date: Fri, Apr 16, 1999 8:58 AM
Subject: Atlas letter

King,

I provided OGC's revision of the letter. Subject to incorporation of those changes, you have OGC's NLO on the letter.

Maria

9906020195 990518
CF ADOCK 04003453
CF

X/2

40 - 3453

August 9, 1999

MEMORANDUM TO: James Turdici, Director
Division of Accounting and Finance
Office of the Chief Financial Officer

FROM: Joseph R. Gray
Associate General Counsel for
Licensing and Regulation

SUBJECT: EXEMPTION OF FEES FOR ATLAS CORPORATION AND SUCCESSOR TRUSTEE/LICENSEE OF THE MOAB MILL SITE

Atlas Corporation (Atlas) is the owner of the Moab Mill site in Grand County, Utah. The Moab Mill site currently is subject to the requirements set forth in NRC Source Materials License No. SUA-917. On September 22, 1998, Atlas filed a petition for relief under Chapter 11 of the Bankruptcy Code and since that date has been operating as a Debtor in Possession. The NRC filed a claim in the bankruptcy proceeding for estimated costs associated with further reclamation of the Moab Mill site and for unpaid licensing fees.

On April 28, 1999, with the Commission's consent, the NRC entered into an agreement with Atlas and the State of Utah (the other claimant in the bankruptcy proceeding) to resolve claims for reclamation costs and past fees. (See Moab Uranium Mill site Transfer Agreement, page 2, paragraph 3A, (attached).) Pursuant to that agreement, Atlas will transfer the Moab Mill site, along with other assets, to a reclamation trust. A Trustee/Licensee will be appointed by the NRC, with the concurrence of the State of Utah, who will be responsible for managing the trust assets as well as undertaking efforts to reclaim the Moab Mill site. The license for the Moab Mill site will be transferred from Atlas to the Trustee.

The settlement agreement reached by the NRC and Atlas included claims for past unpaid fees. Therefore, these fees will have been discharged in bankruptcy (when the bankruptcy court approves the settlement) and should no longer be carried. In addition to the past fees charged to Atlas, OGC is concerned about the potential impact of future fees associated with the NRC's licensing and oversight of the Trustee/Licensee and the reclamation of the Moab Mill site. The trust estate intended to be used for control and reclamation of the Moab Mill site will likely have very limited assets with which to complete the reclamation currently required by the license. To maximize the amount of funds available to the Trustee/Licensee to engage in reclamation work, we believe that the Trustee/Licensee should be exempt from NRC fees.

If you have any questions, please feel free to call Stephanie Martz, who can be reached at 415-1520.

Attachment: As stated

NLXQ 1/1

cc: John Greeves, NMSS/DWM
Joseph Holonich, NMSS/DWM

Distribution: (11) Central Files Only OGC s/f OGC r/f R&FC s/f R&FC r/f
Martz/Chron Cyr Burns Chandler Gray

DOCUMENT NAME: G:\RFC\SRM\Atlasfee.wpd

X/3

To receive a copy of this document, indicate in the box: "C" = Copy without enclosures "E" = Copy with enclosures "N" = No copy

OFFICE	OGC	OGC	OGC		
NAME	S. Martz	S. Treby	J. Gray		
DATE	08/5/99	08/6/99	08/6/99	08/ /99	08/ /99

OFFICIAL RECORD COPY

9908120130 990809
CF ADOCK 04003453
CF

NRC FILE CENTER COPY

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:		
ATLAS CORPORATION, a Delaware corporation EIN#: 15-5503312	)	Case No. 98-23331 DEC Chapter 11
ATLAS GOLD MINING INC., a Nevada Corp. EIN#:84-1023843	)	Case No. 99-10889 DEC Chapter 11
ATLAS PRECIOUS METALS INC., a Nevada Corp., EIN#: 87-0400332	)	Case No. 99-10890 SBB Chapter 11
Debtors.	)	(Jointly Administered Under Case No. 98-23331 DEC)

MOAB URANIUM MILLSITE TRANSFER AGREEMENT

Atlas Corporation ("Atlas"), the Official Unsecured Creditors Committee (the "Committee"), Nuclear Regulatory Commission ("NRC"), the State of Utah ("Utah") and ACSTAR Insurance Companies ("ACSTAR"), for their Moab Uranium Mill and (Millsite) Transfer Agreement, hereby agree as follows:

1. Atlas filed its petition for relief under Chapter 11 of the Bankruptcy Code on September 22, 1998. Atlas Gold Mining Inc. and Atlas Precious Metals Inc. filed their petitions for relief under Chapter 11 of the Bankruptcy Code on January 26, 1999. Since the date of the filing of their petitions, the Debtors have been operating as Debtors in Possession. Atlas has filed its Plan of Reorganization on March 30,1999 with the United States Bankruptcy Court for the District of Colorado. The Definitions as contained in Article I of the Plan as filed are attached herein as Exhibit A and incorporated herein by reference. The references to Class numbers are to the March 30, 1999 Plan.

2. The Debtor, the Committee, NRC, Utah and ACSTAR, the issuer of the bonds securing the obligations of Atlas, have reached an agreement, subject to Court approval of this agreement and confirmation of a Plan of Reorganization consistent with the agreement, which resolves the issues raised regarding the Moab Millsite including the treatment of the claims of NRC, Utah and ACSTAR under the Plan of Reorganization. Such claims shall be treated in the plan as below stated:

3. Treatment of the Claims of the NRC and Utah:

A. The Allowed Claims of the N RC and Utah for Reclamation of the Moab, Utah Millsite shall consist of a separate impaired class under any Plan of Reorganization. The Class, currently designated as Class 4 under the Plan as filed, shall be comprised of any and all civil, administrative or bankruptcy claims of any kind or nature, whether filed, unfiled or to be accrued, known or unknown based upon any and all federal, state or municipal rules, regulations, statutes, license or permit requirements, whether now in existence or enacted in the future by the NRC and Utah, or any other entity with the same or similar claims with respect to any construction, operation, maintenance, possession, transfer and/or final reclamation, decommissioning, remediation or corrective action associated with facilities, roads, improvements and waste materials disposal and containment at the former uranium processing mill site owned by Atlas on the Moab land, or in any way related to the Mill or the Mill Operations. Atlas' Moab Cleanup Obligations are secured by bond number 5652 issued by ACSTAR in the amount of $6,500,000.

B. A Reclamation Trust (Trust) shall be established by NRC, with concurrence from Atlas and the designated representative of Utah, on or before the Effective Date under the guidelines and regulations of NRC. The Reclamation Trustee shall be selected by NRC with the agreement of the designated representative of Utah. If NRC and Utah cannot reach agreement on the terms of the Trust or on the choice of the Trustee:

1. The Trust shall nonetheless be established, and the trust instrument establishing the Trust shall reflect all of those matters on which NRC and Utah can reach agreement; and

2. An Interim Trustee, selected by NRC, shall be appointed for a period not to exceed 180 days after the Effective Date; and

3. NRC and Utah shall continue to negotiate on those areas on which they cannot reach agreement; and

4. Once NRC and Utah reach agreement on matters on which they cannot presently agree, the trust instrument establishing the Trust shall be amended to reflect those subsequent agreements; and

5. Atlas shall transfer the monies and assets to the Trust on or before the Effective Date as are called for under this Moab Uranium Millsite Transfer Agreement, notwithstanding the possibility that the trust instrument establishing the Trust may be amended after the date of this agreement, after the date of the disclosure statement, or after the Effective Date; and

6. The assets transferred to the Trust under the terms of the Plan shall be held in compliance with the regulations and requirements of NRC as stipulated in a Modified License Transfer Order and shall be distributed or utilized in accordance with the regulations, Modified License Transfer Order requirements, and requirements or NRC as stipulated in a Modified License Transfer Order and relevant Trust documents according to the authority of the Reclamation

Trustee.

C. On the Effective Date of the Plan, Atlas shall transfer to the Trust the following assets in full satisfaction of any and all claims of any kind and nature held by the Class:

The transfer of all assets shall be by quit claim deed or the equivalent without any representations or warranties of any kind.

1. Title X Receivables for past claims; minus up to $675,000 which may be received from the Department of Energy in 1999;

2. 50% of any net recovery from collection of the disputed Title X claim for mill dismantling performed by American Reclamation and Dismantling Inc. (ARD Claim);

3. Any and all rights of Atlas' to Future Title X Receivables;

4. Atlas' Water Rights located at the Moab Land, listed as 6.3 cfs from the Colorado River, Grand County; Utah, Water Right No. 01-40, Application 30032, Certificate No. 60111;

5. Atlas' Possible Water Rights in the following:

A. Water Right Number 01-1121 for 31 acre-feet, a segregation application from Water Right Number 01-40;

B. Water Right Number 09-199 for 3.33 cfs in the San Juan River;

C. Water Right Number 05-982 for .015 cfs for a well in the Monticello Mining District;

D. Water Right Number 99-32 for .004 cfs from Seep Springs (approx. 4 miles from Fry Canyon).

6. Atlas' interest in that certain real property owned by Atlas and consisting of approximately 430 acres, located in Grand County, Utah together with all buildings, structures, improvements, appurtenances fixtures and easements, herein referred to as the "Moab Land";

7. ACSTAR shall transfer the sum of $5,250,000 to the Reclamation Trust in full and complete satisfaction of the obligations under Bond #5652 and upon receipt of said payment, NRC shall provide to ACSTAR a full, final and complete discharge of all of ACSTAR's obligations at the Moab Site and ACSTAR's surety bond issued in connection therewith; the form of said release to be mutually acceptable to NRC and ACSTAR;

8. Stock comprising two and one half percent (2.5%) of the stock of the Reorganized Atlas shall be issued to the Reclamation Trust; and

9. All records, documents, studies, data, and other information with respect to construction, operation, maintenance, reclamation, decommissioning, remediation or corrective action associated with facilities, roads, improvements and waste materials disposal and containment at the Moab Utah Millsite. The Reclamation Trust assumes the rights and privileges of Atlas with respect to those documents, studies, data and information. However, Atlas and/or its representatives shall retain the right of access, inspection and copying of said documents on an as needed basis.

D. The Class claims shall be satisfied in full by the transfer of the stock and assets provided in this paragraph. NRC and Utah shall waive and release any and all civil, administrative or bankruptcy claims against Atlas, the Reorganized Atlas, and their officers, directors, employees, agents and representatives. Upon transfer of the assets to the Reclamation Trust, the Reclamation Trust shall assume the obligations of Atlas, in accordance with the terms of a Modified License Transfer Order to be entered into by NRC and the Reclamation Trustee on behalf of the Reclamation Trust, on or before the effective date of the Plan. The license issued to Atlas by the NRC relative to the Mill and Mill Operations shall either be terminated or transferred to the Reclamation Trust in accordance with the terms of the Modified License Transfer Order. Atlas obligations shall be limited to executing any and all documents necessary to effectuate the terms of the Plan. NRC and Utah shall release any and all claims to any remaining assets of Atlas, APMI and/or AGMI, including but not limited to any cash, mining properties, equity interest and/or potential insurance recoveries, except as to its rights as a shareholder of the Reorganized Atlas as referenced above.

4. Treatment of the Claims of ACSTAR:

The allowed secured and unsecured claims of ACSTAR shall consist of a separate class, designated as Class 5 in the Plan, providing for specific, impaired treatment of its secured and contingent unsecured claims.

A. A sub-class shall provide for the treatment of the ACSTAR secured claims. This Class claims shall be comprised of the Allowed Secured Claim of ACSTAR. ACSTAR has issued bonds to secure the environmental cleanup obligations of Atlas and certain of its subsidiaries including AGMI and APMI, including its obligations relating to the Moab Land, Mill and and other cleanup sites. ACSTAR shall be issued stock in the Reorganized Atlas comprising two and one half percent (2.5%) of the stock of the Reorganized Atlas in satisfaction of its satisfying the obligations under Bond #5652 to the Class 4 Claimants. The 2.5% stock interest shall be held in escrow by an escrow agent mutually acceptable to ACSTAR and the Reorganized Atlas.

B. Allowed Unsecured Claims of ACSTAR. The ACSTAR claims against Atlas, AGMI and APMI are cross-collateralized. ACSTAR has issued bonds to secured the cleanup

obligations of Atlas, AGMI and APMI on properties other than the Moab, Utah site. The Class 5 Claimant shall have a claim for its actual losses in excess of the remaining security ACSTAR holds on the bonds not to exceed $500,000. For purposes of voting and determining feasibility the claim shall be estimated at $500,000. If the bonds issued by ACSTAR to secure the Cleanup Obligations at the Gold Bar Property is terminated without being called, ACSTAR's Allowed claim shall be $0 and its stock interest in the Reorganized Atlas shall be transferred to management, pursuant to the terms of a Management Compensation Program, to be contained in the Plan of Reorganization. Any and all cash then held in escrow in excess of the losses ACSTAR has then incurred, plus the face amount of the then remaining ACSTAR bonds, if any, shall be released to the Reorganized Atlas.

ACSTAR shall retain its rights under the Colorado State Bank Escrow Account, currently containing $250,000 in proceeds from the sale of Cornerstone, pursuant to the previous Court Order approving the sale of Cornerstone, and the letter of credit posted to secure its bond obligations, unless said letters of credit have been called prior to the confirmation date in which case the rights shall attach to the cash proceeds from said letters of credit. Any claim of ACSTAR that its claims are entitled to treatment as an administrative expense, under any theory, and any potential claim against Arisur, shall be waived.

5. Upon Court approval of this Transfer Agreement, but prior to Confirmation of the Plan of Reorganization, ACSTAR shall be authorized to draw the letter of credit in the full amount of $5,425,000. Atlas will assist ACSTAR in obtaining the funds, or drawing on the letter of credit The Letter of Credit is fully secured by restricted cash currently being held by Merrill Lynch. The cash proceeds of the letter of credit along with any and all interest accruing on the cash shall be deposited in the escrow account established at Colorado State Bank, Denver, CO. Upon the effective date of the Plan or as provided in paragraph 11 below, whichever is applicable, $5,250,000 shall be paid over to the Trust from the escrow account. The balance shall be held and distributed in accordance with the terms reflected above regarding the treatment of the ACSTAR claim.

6. Atlas has filed a Plan which incorporates the terms of this agreement in their entirety. Atlas shall file separate Plans for Atlas Corporation, Atlas Precious Metals Inc. and Atlas Gold Mining Inc. and a consolidated Disclosure Statement for all three Debtor entities on or before April 30, 1999. The Plans shall each include an Effective Date for the Plan of thirty days after Confirmation of the Plans.

7. NRC, ACSTAR, and Utah agree to support and vote in favor of any Plan proposed by Atlas which incorporates the terms of this agreement in its entirety and any Plan of Atlas Precious Metals Inc. and Atlas Gold Mining Inc. which incorporates the Atlas Plan.

8. In addition, ACSTAR and the Unsecured Creditors Committee agrees to support and vote for a Plan of Reorganization for Atlas Precious Metals Inc. and Atlas Gold Mining Inc. that provides for Pro Rata treatment of any and all inter-company payables on par with any other general unsecured creditors.

9. The Unsecured Creditors Committee agrees to support and vote for a Plan of Reorganization that incorporates this agreement in its entirety but reserves the right to object any other provisions of any Plan of Reorganization.

10. Upon Court approval of this agreement, it shall be binding on all parties to the agreement, and successors and assigns, including but not limited to a Chapter 11 or Chapter 7 Trustee appointed in any of the above captioned matters. All parties agree to take all steps reasonably necessary to effectuate the terms of this agreement and take no actions during the interim period in contravention of this agreement.

11. If a Plan of Reorganization, consistent with the terms of this agreement is not confirmed by December 31,1999 but an Order approving this agreement has been entered by the Court, the agreement as to the treatment of claims of NRC, Utah and ACSTAR shall still be binding on the parties. Atlas shall at that point in time, if a Plan has not been confirmed, transfer the above assets (refer to 3.C) to the Reclamation Trust, with the exception of the stock in the reorganized Debtor, in full satisfaction of any and all civil, administrative and bankruptcy claims as referenced above. Should a Plan of Reorganization be approved at a later date, Atlas shall at that time transfer the stock to ACSTAR and the Reclamation Trust as referenced above.

Dated this 28th day of April, 1999.

ATLAS CORPORATION

By:

ATLAS GOLD MINING INC.

By:

ATLAS PRECIOUS METALS INC.

By:

ACSTAR INSURANCE COMPANIES

By Henry Nosko, Jr. President

STATE OF UTAH

____

By: Dianne R Nielson
Executive Director
Utah Department of Environmental Quality

U. S. NUCLEAR REGULATORY COMMISSION

By: Joseph J. Holonich

OFFICIAL UNSECURED CREDITORS COMMITTEE

[signature]

By: ERIC E. RYBACK

AGREE AS TO FORM:

SENDER & WASSERMAN, P.C.

By: ____________________

Harvey Sender, #7546
Bonnie A. Bell, #14923
Daniel J. Garfield, #
1999 Broadway, Suite 2305
Denver, Colorado 80202
(303) 296-1999
Fax No. (303) 296-7600
E-mail: sender@sendwass.com

ATTORNEYS FOR DEBTOR

BLOCK MARCUS WILLIAMS LLC

By: [signature]
Howard R. Tallman, 10103
1700 Lincoln St., Suite 3550
Denver, CO 80203-1025
(303) 830-0800
Fax: (303) 830-0809

ATTORNEYS FOR OFFICIAL UNSECURED CREDITORS COMMITTEE

STATE OF UTAH

By: [signature]
Denise Chancellor, Esq.
Fred G. Nelson, Esq.
Utah Attorney General's Office
P.O. Box 140873
Salt Lake City, Utah 84114-0873

THOMAS L. STRICKLAND
~~LINDA A. McMAHAN~~
UNITED STATES ATTORNEY

By:

Robert D. Clark, #8103
Assistant United States Attorney
U.S. Department of Justice
1961 Stout Street, Suite 1100
Denver, CO 80294
(303) 844-3885

FOR THE UNITED STATES:

4/15/99

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division

DAVID E. STREET
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-5471

LINDA A. McMAHAN
United States Attorney
District of Colorado

BY: ROBERT D. CLARK
Assistant United States Attorney
District of Colorado
1961 Stout Street, Suite 1100
Denver, Colorado 80294
(303) 844-3885
Baltimore, Maryland 21201
(410) 962-2458

KERR, FRIEDRICH, BROSSEAU,
BARTLETT, P.C.

By: ______________________
Dennis J. Bartlett, #14918
1600 Broadway, Suite 1360
Denver, Colorado 80202-4927
303) 812-1200
ATTORNEYS FOR ACSTAR

ARTICLE I

DEFINITIONS

All capitalized terms used herein shall have the respective meanings set forth below or otherwise assigned in the Plan. All other terms shall have the meanings assigned to such terms in the Bankruptcy Code or the Bankruptcy Rules, or if none, by common usage.

1.1 "ACSTAR" shall mean ACSTAR Insurance Company. ACSTAR has issued bonds to secure the Cleanup Obligations of Atlas and certain of its subsidiaries.

1.2 "ACSTAR Bonds" shall mean Bond #6149 for the Carter Raymond Property, Bond #6039 and Bond #6907 for the Grassy Mountain Property, Bonds #5559, #5660 and #5661 for the Gold Bar Property, having a collective face amount of $1,790,000 and secured by a letter of credit in the amount of $5,425,000, and $250,000 held in an escrow account for the benefit of ACSTAR with Colorado State Bank as the escrow agent (the "Escrow Fund"). The security for the ACSTAR Bonds and the ACSTAR Moab Bond are cross-collateralized and represent joint and several obligations of Atlas, APMI and AGMI.

1.3 "ACSTAR Moab Bond" shall mean Bond #5652 for the Moab Utah Site Cleanup Obligations in the face amount of $6,500,000 and secured by a letter of credit in the amount of $5,425,000 and the Escrow Fund. The security for the ACSTAR Bonds and the ACSTAR Moab Bond is the same letter of credit and are cross-collateralized and constitute joint and several obligations of Atlas, APMI and AGMI.

1.4 "Administrative Expense" shall mean any cost or expense of administration of Chapter 11 allowed under 11 U.S.C. § 503(b) of the Code.

1.5 "Affiliate" shall mean any entity affiliated with Atlas pursuant to 11 U.S.C. § 101(2).

1.6 "AGMI" shall mean Atlas Gold Mining Inc., a Nevada corporation, the Chapter 11 Debtor under Case No. 99-10889 DEC.

1.7 "AGMI Plan" shall mean the Plan of Reorganization submitted by the Debtor, Atlas Gold Mining Inc.

1.8 "Allowed Claim" shall mean (a) an unsecured claim against Atlas which is set forth in Atlas' schedules other than an unsecured claim against Atlas scheduled by Atlas as disputed, contingent or unliquidated; (b) an unsecured claim against Atlas which has been filed pursuant to 11 U.S.C. § 501, and with respect to which no objection to the allowance thereof has been interposed within sixty (60) days after the Effective Date, or as to which any objection has been determined by Final Order; provided however, that interest which would have accrued on or after September 22, 1998, shall not be a part of any Allowed Claim. Allowed Claims may include, but are not limited

EXHIBIT
A

to, claims that arise from the rejection of executory contracts.

1.9 "Allowed Secured Claim" shall mean an Allowed Claim secured by property of Atlas.

1.10 "American Reclamation and Dismantling Receivable" shall mean a claimed receivable of Atlas, for reimbursement of $560,000 filed with the Department of Energy and not approved to date, representing 56% of the amount expended by Atlas and reimbursable pursuant to Title X.

1.11 "APMI" shall mean Atlas Precious Metals Inc., a Nevada corporation, the Chapter 11 Debtor under Case No. 99-10890 SBB.

1.12 "APMI Plan" shall mean the Plan of Reorganization submitted by the Debtor, Atlas Precious Metals Inc.

1.13 "Arisur" shall mean Arisur Inc., a Grand Cayman corporation which is a wholly owned subsidiary of Atlas, and which operates in Bolivia through a Branch, lead, zinc and silver mines.

1.14 "Atlas" shall mean Atlas Corporation, a Delaware corporation, the Chapter 11 Debtor under Case No. 98-23331 DEC.

1.15 "Atlas Plan" shall mean the Plan of Reorganization submitted by the Debtor, Atlas.

1.16 "Bankruptcy Case" shall mean the Atlas Chapter 11 case pending in the United States Bankruptcy Court for the District of Colorado.

1.17 "Bankruptcy Code" or "Code" shall mean Title II of the Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 101, et seq., as amended.

1.18 "Bar Date" shall mean January 15, 1999.

1.19 "Chapter 11" shall mean Chapter 11 of the Code.

1.20 "Claim" shall mean a claim against Atlas as defined in 11 U.S.C. § 101(5).

1.21 "Confirmation" shall mean the entry by the Court of an order confirming the Plan in accordance with Chapter 11 of the Code.

1.22 "Contested Claim" shall mean shall mean any Claim which has been scheduled by Atlas as disputed, contingent, or unliquidated or any Claim as to which an objection to the allowance thereof has been or will be filed within sixty (60) days after the Effective Date. Contested Claims

shall be treated under the provisions of Article X of this Plan until allowance or disallowance of such claim has been determined by a Final Order. Contested claims include claims which Atlas believes should be objected to in whole or in part. Contested claims further include any claims held by creditors against whom Atlas believes actions may be brought under Sections 544, 547, 548 or 549 of the Bankruptcy Code.

1.23 "Court" shall mean the United States District Court for the District of Colorado in Bankruptcy.

1.24 "Debtor" and "Debtor-in-Possession" shall mean Atlas.

1.25 "Disclosure Statement" shall mean the consolidated disclosure statement describing the Atlas Plan, the AGMI Plan and the APMI Plan, approved by the Court, and distributed to the various classes as provided in 11 U.S.C. § 1125.

1.26 "Effective Date"shall mean the first business day following thirty (30) days after the date the order confirming the Atlas Plan becomes a Final Order.

1.27 "Final Order" shall mean an order or a judgment as to which the time to appeal or seek review or rehearing has expired. In the event that an appeal or petition for rehearing is filed, an order or judgment shall be final unless an order enters granting a stay pending appeal or petition for rehearing.

1.28 "Future Title X Receivables shall mean those sums which accrue in the name of Atlas or the Reclamation Trust, subsequent to the Effective Date of the Atlas Plan from the Department of Energy under the provisions of 42 U.S.C. 2296a.

1.29 "Gold Bar Property" shall mean the gold resource, mill facilities and any all other real and personal property located on the gold mining property located in Eureka County, Nevada commonly referred to as Gold Bar.

1.30 "Insider" means any entity defined in 11 U.S.C. § 101(31)(B).

1.31 "Late Filed Claims" shall mean any claim filed in the Atlas Bankruptcy Case after January 15, 1999.

1.32 "Management Compensation Plan" shall mean the compensation plan formed in accordance with Article XI of this Plan to compensate current key management and employees for their efforts in reorganizing Atlas and to facilitate the orderly transition to future management, as may be required.

1.33 "Mill" shall mean the former uranium processing mill which was dismantled and previously located on the Moab Land.

1.34 "Mill Operations" shall mean the prior operations of the Mill.

1.35 "Moab Cleanup Obligation" shall mean any obligation of Atlas under the Moab License or under any federal, state or municipal rules, regulations or statutes to pay for or perform any remediation or cleanup at the Moab Utah Site or any other location which is currently or in the past been operated or owned by Atlas.

1.36 "Moab Land" and "Moab Utah Site" shall mean that certain real property owned by Atlas and consisting of approximately 430 acres, located in Grand County, Utah together with all buildings, structures, improvements, appurtenances, fixtures and easements.

1.37 "Moab License" shall mean Source Material License SUA-917.

1.38 "NRC" shall mean the Nuclear Regulatory Commission, an agency of the federal government having jurisdiction over the Moab Utah Site.

1.39 "Other Cleanup Obligations" shall mean any obligation of Atlas, APMI or AGMI under any federal, state or municipal rules, regulations or statutes to pay for or perform any remediation or cleanup at any location other than the Moab Utah Site which is currently or in the past been owned or operated, including, but not limited to, the Carter Raymond, Gold Bar and Grassy Mountain properties.

1.40 "Post-petition" shall mean anytime on or subsequent to September 22, 1998.

1.41 "Pre-petition" shall mean anytime prior to September 22, 1998.

1.42 "Pro Rata" shall mean with respect to any claimant, the percentage which the Allowed Claim of a creditor bears to the sum of all Allowed Claims in the same class as such Allowed Claim.

1.43 "Reclamation Trust" shall mean the trust to be formed pursuant to paragraph 4.3 of the Atlas Plan in compliance with the consent and approval of the NRC.

1.44 "Reclamation Trustee" shall mean the person or entity selected by the NRC with the agreement of the designated representative of Utah, prior to the Effective Date.

1.45 "Reorganized Atlas" shall mean the reorganized Atlas Corporation under the confirmed Atlas Plan.

1.46 "Retiree Medical Plan" shall mean that Medical Plan issued for the benefit of retirees of Atlas.

1.47 "Shipes Parties" shall mean Harold R. Shipes, Eileen Shipes, Danielle N. Shipes, John A. McKinney, Lynette R. McKinney, Raymond S. Birch, Rochelle M. Birch, Herbert E. Dunham, Ana M. Dunham, Alexandra McKinney, Justin S. Birch, Ashley McKinney, Tyler Birch, H. Edward Dunham, P. Brian Dunham, Rachel A. Dunham, Elizabeth M. Dunham, Suramco Holdings, Inc. who have agreed to treatment as Class 10 and Class 12 creditors under the terms of the Settlement Agreement dated January, 1999, approved by the Bankruptcy Court, which closed on or about March 25, 1999.

1.48 "Stock Incentive Plan" shall mean that plan which may be established in accordance with Article XI of this Atlas Plan as a future incentive to future management pursuant to which management may receive stock or earn stock as a performance bonus.

1.49 "Title X Receivables for Past Claims" shall mean those sums which accrue to Atlas prior to the Effective Date of the Plan from the Department of Energy under the provisions of Pub. L. 102-486, Title X, § 1001, Oct. 24, 1992, 106 Stat. 2946, codified at 42 U.S.C. § 2296(a), including pre-petition and post petition claims, regardless of approval of the claims by the Department of Energy, exclusive of up to $675,000 anticipated to be received by Atlas prior to confirmation, and exclusive of the American Reclamation and Dismantling Receivable.

1.50 "Uranium Tailings Pile" shall mean the tailings pile of approximately 10.5 million tons impounded on the Moab Land.

1.51 "Utah" shall mean the State of Utah.

1.52 "Water Rights" shall mean Atlas' rights to water located at the Moab Land, listed as 6.3 cfs from the Colorado River, Grand County, Utah, Water Right No. 01-40, Application 30032, Certificate No. 6111.

OFFICE OF THE
GENERAL COUNSEL

Central Files Only

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 15, 1997

40-3453

MEMORANDUM TO: Karen Cyr
General Counsel

FROM: for Francis X. Cameron
Deputy Assistant General Counsel for
Rulemaking & Fuel Cycle

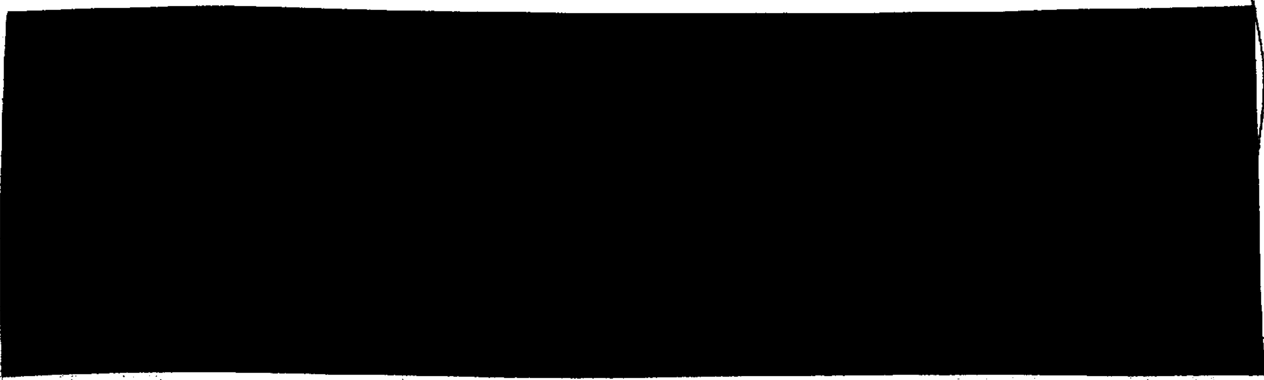
SUBJECT: EFFECT OF A BANKRUPTCY FILING ON ATLAS CORPORATION'S SURETY BOND AND STANDBY TRUST FUND

You requested a memorandum on the legal status of Atlas' surety bond if Atlas were to go into bankruptcy. Steve Lewis has provided the following analysis of the key considerations.

Existing financial assurance instruments:

Atlas has provided a surety performance bond in the amount of $6,500,000.00. The NRC is the beneficiary of the bond. In combination with the surety bond, a Standby Trust Fund has been established, also for the benefit of the NRC, to receive monies from the surety bond should that become necessary. In the event of a bankruptcy filing by or against Atlas, the NRC would likely give instructions to the surety company to pay the $6,500,000.00 penal sum into the Standby Trust Fund.

Applicable Case Law:



W/HOLD Ex. 5

CONTACT: Stephen H. Lewis, OGC
(301) 415-1684

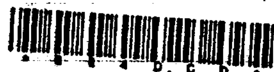
NLXQ 1/1

NRC FILE CENTER COPY

9707230327 970715
CF ADOCK 04003453
CF

97142

230006



1/1

"Augmentation" issue:

The NRC's decommissioning financial assurance regulations make use of standby trusts to receive monies from financial assurance instruments, should that become necessary, in order to avoid the NRC having to pay over the funds to the Treasury under 31 U.S.C. § 3302(b). This method has been used for the same purpose by the USEPA since the early 1980's. *See* 46 Fed. Reg. 2802, at 2823 (1/12/81), Interim Final Rule on 40 C.F.R. Part 265, Subpart H,

Decommissioning and Cleanup of Facility Owned by Subsidiary," at pp. 9-10.

Attachments: As stated

cc: W. Olmstead, OGC
D. Hassell, OGC
B. Kildee, OGC
R. Fonner, OGC
J. Holonich, NMSS
M. Fliegel, NMSS
R. Turtil, NMSS
T,. Johnson, NMSS
L. Bykoski, NMSS

CONSULTING GROUP

ICF Incorporated
9300 Lee Highway
Fairfax, VA 22031-1207
703/934-3000 Fax 703-934-9740

June 14, 1996

MEMORANDUM

To: Steven Hom, NRC

From: Craig Dean and Paul Bailey

Subject: Tax Considerations in Provision of Funds by Corporate Parent for Decommissioning and Cleanup of Facility Owned by Subsidiary

---

This memorandum describes the results of our research into possible arguments based on tax implications for the reluctance of General Atomics to set up a trust to hold funds set aside for decommissioning and cleanup at the Sequoyah site.

We examined three questions:

(1) If General Atomics paid directly for decommissioning and cleanup of the Sequoyah site, would such payments be allowed (a) as currently deductible "ordinary and necessary expenses" (i.e., would they be allowed as a deduction against income from the trade or business for that tax year), or are they likely to be treated as permanent improvements that must be considered a capital expenditure; and (b) would the expenditures be allowable as business expenses to General Atomics, as the corporate parent of Sequoyah?

(2) What are the current tax implications of using a trust fund to hold funds that will be used for decommissioning and cleanup? and

(3) Do the conclusions reached with respect to (1) or (2) change if, instead of setting aside funds to pay for decommissioning and cleanup of Sequoyah, General Atomics transfers funds directly to NRC as a "settlement" without specifying that they are for the decommissioning and cleanup of a particular facility?

Our research consisted of examination of standard federal tax materials.[1] In addition, in 1994 ICF staff attended a meeting of the District of Columbia Bar at which the tax treatment of

[1] CCH-Standard Federal Tax Reports and Federal Tax Coordinator 2d and Research Institute of America, Federal Tax Coordinator 2d. In addition, the Research Institute of America recently issued a Tax Planning and Practice Guide, "How to Handle Environmental Cleanup Costs," May 1996, that addresses some of the key issues.

environmental cleanup expenses was discussed by three key Internal Revenue Service staffers.[2] We also have discussed at length with tax specialists the deductibility of certain categories of remediation costs, in connection with support ICF provided to the EPA Lead Based Paint Hazard Reduction and Financing Task Force and its Committees.

In summary, we believe that:

- Decommissioning and cleanup costs might be considered deductible ordinary and necessary expenses if paid directly by General Atomics, even if the payments were made by General Atomics for Sequoyah, if the site was obtained from Kerr McGee before it was contaminated. However, if the facility was obtained from Kerr McGee in an already-contaminated condition, the cleanup probably would be considered a capital expenditure.

- Payment of funds into a trust is unlikely to be immediately deductible, even if the cleanup ultimately is considered a business expense. Instead, under well-established tax rules (i.e., the "economic performance" test), contributions to a trust set up to pay for remediation cannot be deducted at the time of contribution but only at the time they are paid out for remediation. This result is not changed by a recent rule promulgated by the IRS dealing with trusts formed to collect and disburse amounts for environmental remediation, which may be applicable to trusts created to provide financial assurance to NRC for decommissioning costs.

- Congress has established some narrow exceptions to this result for nuclear reactor decommissioning, surface mining (e.g., coal), and non-hazardous waste disposal funds. However, we do not believe that the Sequoyah situation could qualify under any of these exceptions.

- A direct and irrevocable transfer of funds to NRC without a link to a particular site would be deductible, because such a transfer would immediately satisfy the "economic performance" test for when a taxpayer may take a deduction. However, these tax considerations appear to run almost directly contrary to NRC's interests in avoiding triggering the requirement under 31 U.S.C. § 3302(b) that money received directly by the government be deposited in the Treasury "as soon as practicable without deduction for any charge or claim."

---

[2] In 1994, the Service announced that it had formed a study group to develop a consistent position on the tax status of hazard evaluation and remediation expenses when a taxpayer has purchased property and later becomes subject to a legal requirement that it clean up harmful substances associated with the property. Statement by Glenn R. Carrington, Assistant Chief Counsel for Income Tax and Accounting, Internal Revenue Service, at the District of Columbia Bar 1994 Winter Convention, Workshop on Tax Treatment of Environmental Clean-up Expenditures, March 1, 1994. No timetable was specified for release of any report or decisions from the study, and ICF is not aware of any final report.

- Finally, use of a qualified settlement trust fund might provide a mechanism that would allow funds placed in such a fund to be deductible and, simultaneously, avoid the impact of 31 U.S.C. § 3302(b). Additional research would be necessary to ensure that a settlement trust fund could be structured to achieve both of these goals.

DISCUSSION

1.a. DEDUCTIBILITY OF CLEANUP EXPENSES

The Internal Revenue Service takes the position that whether an expense for environmental cleanup can be deducted under § 162 of the Code or must be capitalized under § 263 depends on the particular facts of each case. In general, however, the IRS and the courts look to a number of factors. Incidental repairs usually are deductible; permanent improvements must be capitalized. Criteria for identifying "permanent" repairs include the following:

- Amounts paid to restore property or reverse its "exhaustion" after depreciation, amortization, or depletion;
- Amounts paid that add "materially" to the value of the property or otherwise constitute a "betterment" of the property, particularly expenditures that add "appreciably" to the value of the property or "substantially" prolong the life of the property; and
- Activities that adapt the property to a new or different use.[3]

The fact that expenditures are undertaken to comply with government regulations or other governmental requirements does not, by itself, determine whether they are deductible. Rather, these expenditures must be evaluated using the same criteria as other types of expenditures.

Revenue Ruling 94-38[4] establishes the most recent position of the Service on the application of these criteria to an environmental cleanup, and many of its facts appear to closely resemble the Sequoyah situation. However, acquisition of the Sequoyah plant from Kerr-McGee may make the principles in RevRul 94-38 inapplicable.

---

[3] These criteria come directly from IRS Regulations under §§ 162 and 263. Section 1.162-4 provides that the cost of "incidental repairs which neither materially add to the value of the property nor appreciably prolong its life" may be deducted as an expense. Section 1.263(a)-1(a) provides that no deduction shall be allowed for "permanent improvements or betterments made to increase the value of any property or estate," or "any amount expended in restoring property. . . ." The regulations further provide that the amounts referred to include "amounts paid or incurred (1) to add to the value, or substantially prolong the useful life, of property owned by the taxpayer, such as a plant or equipment, or (2) to adapt property to a new or different use." (§1.263(a)-1(b))

[4] U.S.Tax Reporter §86.263, June 9, 1994.

RevRul 94-38 addresses the deductibility of expenses incurred by the owner of a manufacturing plant, who purchased uncontaminated land in 1970, subsequently built and operated the plant on that land, and buried hazardous waste on portions of the land. In 1993 the owner, in compliance with federal, state, and local regulations, began to carry out remediation activities. These included excavation of contaminated soil, transport of the soil to disposal facilities, backfilling with uncontaminated soil, construction and operation of groundwater treatment facilities, and groundwater monitoring.

The IRS concluded that the costs of construction of the groundwater treatment facilities were capital expenditures because their useful life extended substantially beyond the tax year in which they were constructed. However, soil remediation activities and ongoing ground water treatment expenditures were not considered to produce permanent improvements or to provide significant future benefits, and therefore were treated as deductible. The Service stated that

> the appropriate test for determining whether the expenditures increase the value of property is to compare the status of the asset after the expenditure with the status of that asset before the condition arose that necessitated the expenditure (i.e., before the land was contaminated by X's hazardous waste). [citations omitted] X's soil remediation and ongoing groundwater treatment expenditures do not result in improvements that increase the value of X's property because X has merely restored its soil and groundwater to their approximate condition before they were contaminated by X's manufacturing operations.

The IRS also noted that such expenditures "do not prolong the useful life of the land, nor do they adapt the land to a new or different use." Finally, RevRul 94-38 noted that "since the land is not subject to an allowance for depreciation, amortization, or depletion, the amounts expended to restore the land to its original condition are not subject to capitalization under section 263(a)(2)." The Service noted, in an aside, that soil remediation and ongoing groundwater treatment expenditures "are commonly and frequently required in X's type of business."

Based on the foregoing analysis, RevRul 94-38 held that the costs of evaluation and remediation of soil and groundwater contamination, except for the costs of construction of the groundwater treatment facility, were deductible as ordinary and necessary business expenses.[5]

With the exception of the condition of the property at its acquisition by the taxpayer, this ruling appears to cover the Sequoyah situation. However, if the land was already contaminated when it was obtained from Kerr-McGee, the Service might apply a different analysis than that in RevRul 94-38. In a recent Technical Advice Memorandum, released by the taxpayer on January

[5] The Service stressed in its holding that "[t]hese results are applicable whether the taxpayer plans to continue its manufacturing operations that discharge the hazardous waste or to discontinue those manufacturing operations and hold the land in an idle state."

23, 1996,[6] a taxpayer who had unwittingly contaminated land, disposed of it by charitable donation, and then taken it back when it was found to be contaminated, was initially refused deductibility for costs of cleaning it up. Although the Service reversed its position in this case, attorneys reviewing the ruling suggested that if the taxpayer had initially obtained the land in a contaminated condition and cleaned it up, the cleanup costs would not be deductible, because the land would have been prepared for a new or better use. Recent commentary on RevRul 94-38 follows this interpretation and suggests that it should be limited "to cases in which the taxpayer acquired the property in an uncontaminated state."[7]

In summary, factual questions about the condition of the property at the time it was transferred from Kerr McGee to General Atomics may determine whether General Atomics could anticipate treating cleanup expenditures as ordinary and necessary business expenses if it paid for them directly. Our understanding is that the property was already contaminated when acquired from Kerr McGee. Furthermore, the possibility that Sequoyah obtained the site in an uncontaminated state would be irrelevant to the analysis, if General Atomics, the potential taxpayer, obtained Sequoyah after the site was contaminated. Thus, it appears likely that General Atomics cannot expect decommissioning and cleanup costs to be deductible as ordinary and necessary business expenses.

1.b. DEDUCTIBILITY BY GENERAL ATOMICS OF COSTS ASSOCIATED WITH SEQUOYAH CLEANUP

The fact that General Atomics would be expending money to clean up a facility owned by its second or third tier subsidiary should not affect the potential deductibility of the expenditures. The general rule is that business expenses of another company, such as a subsidiary, can be deducted as the ordinary and necessary expenditures of the company that pays the expenses, if the payment occurs to protect the good will or business purposes of the company paying the expenses.[8] General Atomics can be expected to receive several benefits from the cleanup costs for Sequoyah, including resolution of compliance actions brought by NRC, enhanced good will in the community near the site, and perhaps even avoidance of potential future liabilities. Therefore, if the costs are deductible, the fact that General Atomics is paying them on behalf of its subsidiary should not, by itself, be an obstacle to General Atomic's ability to deduct them.

---

[6] CCH Standard Federal Tax Reports, ¶48,714 "The IRS's Changing Stance on Environmental Cleanup Costs," February 15, 1996.

[7] RIA, "How to Handle Environmental Cleanup Costs," p. 6. The only situations cited in which the restoration principle has not been applied because the property was acquired or constructed in a contaminated state have involved contaminated buildings. However, land, although not depreciable, can be adapted to a new use or substantially increased in value by cleanup. Therefore, cleanup expenses for land need not always be immediately deductible.

[8] CCH-Standard Federal Tax Reports, ¶ 1624.026.

2. TAX IMPLICATIONS OF USING A TRUST FUND TO PROVIDE FOR CLEANUP EXPENSES

Even if the site decommissioning and cleanup would be considered an ordinary and necessary business expense, placement of funds into a trust set up for the purpose of paying for the decommissioning and cleanup would not necessarily trigger immediate deductibility. Section 461 of the Code establishes rules on the year in which a deduction may be taken by cash basis and by accrual basis taxpayers. In general, cash basis taxpayers take deductions in the year in which the deductible payment occurred. However, prepaid expenses form an exception to this rule (i.e., they are deductible when the actual expense is incurred, not when the prepaid fund to cover the expenses is set up). Reserves created for anticipated liabilities similarly are not deductible when the reserves are created.[9] Accrual basis taxpayers may deduct expenses if (a) all events have occurred that determine the fact of the liability for the expense and (b) the amount of the liability can be determined with reasonable accuracy. However, whether this all-events test has been satisfied is usually determined by reference to whether "economic performance" has occurred. Thus, Section 461(h) establishes the general rule that "certain liabilities are not incurred before economic performance occurs."[10] Under § 461(h)(2)(B) "[i]f the liability of the taxpayer requires the taxpayer to provide property or services, economic performance occurs as the taxpayer provides such property or services." The specific liabilities for which economic performance occurs as payments are made are listed in the regulations. Only the category of "insurance, warranty, and service contracts," and the final, unspecified category of "other liabilities not specifically addressed in the Code or regulations," appear capable of covering the Sequoyah situation.[11]

It should also be noted that §468A of the Code creates an exception to the economic performance rule by providing that taxpayers may elect to deduct contributions to a qualified Nuclear Decommissioning Reserve Fund in the tax year the payment is made. This provision applies only to nuclear reactors. Section 468 of the Code similarly allows a deduction for qualified reclamation and closing costs for surface mines subject to the Surface Mining Control and Reclamation Act (SMCRA) or other federal or state law that impose surface mining reclamation and permit requirements substantially similar to SMCRA, as well as for closure costs of non-hazardous waste disposal facilities. Both §§ 468A and 468 contemplate deductible payments representing an allocable or pro rata share of the total closure/reclamation liability, as opposed to allowing a deduction for the entire amount of the liability and §468 appears limited to ongoing or active operations.

---

[9] CCH-Standard Federal Tax Reports ¶4614.21.

[10] The example provided by the CCH-Standard Federal Tax Report ¶21,817.0134, relates to the purchase of an annuity contract in settlement of a lawsuit arising from toxic waste dumping. The cost of the annuity is not deductible when paid; instead, economic performance occurs with each annual payment from the annuity.

[11] CCH-Standard Federal Tax Reporter ¶21,817.0133.

Irrespective of whether General Atomics is a cash or accrual basis taxpayer, therefore, it probably would not be allowed to take a deduction for expenses of decommissioning and cleanup, even if those expenses were prepaid into a trust fund, until the actual payments for the work were made (i.e., the "economic performance" had occurred). In particular, economic performance has not occurred if a contingent payment (such as funding a trust that provides for a potential reversion to the grantor, such as the trust described in Reg. Guide 3.66) is made with respect to a potential liability.[12] Section 468B does provide, however, that economic performance occurs as a taxpayer makes qualified payments to a designated settlement fund (see pages 8-9 below).

Recent regulations issued by the IRS that may govern the tax treatment of trusts set up by NRC licensees to provide financial assurance for decommissioning costs would not change this result. These regulations are directed to the classification of trusts formed to collect and disburse amounts for "environmental remediation of an existing waste site" to discharge taxpayers' liability or potential liability under applicable "environmental laws." The Service declined to define "existing waste site," nor did it specify the laws to which the rule may apply. An "environmental remediation trust" is defined by the rule as meeting the following criteria, which also appear to be met by trusts set up to satisfy NRC's decommissioning requirements (bearing in mind that NRC's regulations advance both public health and safety and environmental goals):

> the organization is organized under state law as a trust; the primary purpose of the trust is collecting and disbursing amounts for environmental remediation of an existing waste site to resolve, satisfy, mitigate, address, or prevent the liability or potential liability of persons imposed by federal, state, or local environmental laws; all contributors to the trust have (at the time of contribution and

[12] Section 1.461-2 provides for deductibility in the year of transfer of funds transferred with respect to a "contested" liability. If a taxpayer contests a liability (e.g., when there is a bona fide dispute as to the proper evaluation of the law or facts to determine the existence or correctness of the amount of an asserted liability, evidenced by an affirmative act, but not necessarily a written protest or legal action), but the taxpayer transfers money to provide for the satisfaction of the asserted liability, and but for the fact that the liability is contested the transfer would have been deductible, a deduction is allowed in the taxable year of the transfer. The Service provides the following example:

> M Corporation contests a $5,000 liability asserted against it by L Company for services rendered. To provide for the contingency that it might have to pay the liability, M transfers $5,000 to an irrevocable trust pursuant to a written agreement among the trustee, M (the taxpayer), and L (the person who is asserting the liability) that the money shall be held until the contest is settled and then disbursed in accordance with the settlement. Such transfer qualifies as a transfer to provide for the satisfaction of an asserted liability. §1.461-2(c)(2) Example (2)

One extremely important qualification must be kept in mind, however. The existence of a contest must be the <u>only</u> factor otherwise preventing the deduction. If the underlying transaction would not qualify as an ordinary and necessary business expense, then setting aside funds under this contested liability provision would not alone make the transaction deductible.

> thereafter) actual or potential liability under federal, state, or local environmental laws for environmental remediation of the waste site;and the trust is not a qualified settlement fund within the meaning of §1.468B-1(a). . . . [13]

The recent rule on environmental remediation funds provides that all items of income, deduction, and credit are attributable to the grantor(s) of the trust, rather than being reported by the trust itself. The regulations are effective for environmental remediation trusts formed on or after May 1, 1996.

The Service notes in the preamble to the rule on environmental remediation funds that it does not change the federal tax accounting rules, particularly section 461(h):

> Amounts contributed to an environmental remediation trust and interest earned on those amounts must be taken into account under the appropriate federal tax accounting rules, including the economic performance rules of section 461(h). Under those rules, taxpayers generally cannot deduct contributions to the trust at the time of the contribution. . . . [14]

The "qualified settlement fund" referenced in §301.7701-4(e)(1) is another form of trust that might be used to address the Sequoyah situation. Such a settlement fund is a designated fund established as a trust fund under applicable state law "ordered by" or "approved by" a governmental authority, including a federal agency, to resolve or satisfy claims, including at least one claim (1) under CERCLA, or (2) arising out of a tort, breach of contract, or violation of law, or (3) designated by the Commissioner of the IRS in a revenue ruling or revenue procedure. A qualified settlement fund is taxed on its "modified" gross income, which excludes amounts transferred to the fund to satisfy the liability for which the fund was established, deductions for administrative costs, and certain other deductions.[15] Transfer of property to a qualified settlement fund is treated as a sale or exchange of property, with associated gain or loss to the transferor, measured by the fair market value of the property at the time it is transferred. The regulations also provide, however, that "for purposes of section 461(h), economic performance occurs with respect to a liability described in §1.468B-1(c)(2)(determined with regard to §1.468B-1(f) and (g)) to the extent the tranferor makes a transer to a qualified settlement fund to resolve or satisfy the liability." That is, economic performance occurs with respect to the liability, if the liability satisfies the criteria that it be a claim arising under CERCLA; a tort, breach of contract, or violation of law; or designated by the Commissioner, and that the claim is not covered by

---

[13] 26 CFR 301.7701-4(e)(1), 61 Fed.Reg. 19191 (May 1, 1996).

[14] 61 Fed. Reg. 19190 (May 1, 1996)

[15] Reg. §§ 1.468B-1 and 1.468B-2.

certain exclusions and limitations. Thus, in contrast to the environmental remediation fund, the qualified settlement fund can provide deductibility for payments into it.[16]

In summary, if General Atomics places funds into a trust fund, such as the trust described in Reg Guide 3.66, for eventual use in cleaning up the Sequoyah site, the firm will not be able to deduct the amount of the payments into the fund as ordinary and necessary business expenditures at the time those payments into the trust are made, but only as the trust releases the funds to pay for the actual cleanup. An environmental remediation fund would also not make contributions to the trust deductible. In contrast, creation of a qualified settlement trust does make contributions to the trust deductible, up to the fair market value of the property contributed.

3. TAX IMPLICATIONS OF A DIRECT TRANSFER TO NRC

A direct transfer of funds to NRC, without use of a trust fund and without reference to costs connected to a particular facility, might avoid some or all of the tax implications described above. Such a transfer, if it were made without any contingent conditions or right of recovery from NRC of any of the transferred funds, would probably meet the economic performance test, because no future obligation would exist to be discharged and no future activity would be linked to the payment. The payment would not be associated with any particular decommissioning or cleanup activities that might take place in the future and thus would not be affected by the timing of those activities. The transaction would resemble (or might in fact be) a payment to settle litigation or a payment to settle a debt owned by General Atomics to NRC. Payment of the funds would be mutually conceded to settle all outstanding obligations.

However, whether the Service would accept such a transaction as accurately reflecting the underlying facts of the situation is a question that we cannot answer. In addition, such a direct transfer would clearly trigger the requirement under 31 U.S.C. § 3302(b) that the money received by NRC be deposited immediately into the Treasury.

As an alternative, NRC might wish to examine more carefully the possibility of using an environmental remediation fund or a qualified settlement fund as a tool in this situation. The environmental remediation fund, as a trust fund, would protect NRC's interests, but would not provide deductibility for payments into the trust. Its only potential benefit to the taxpayer would be avoidance of double taxation on the income to the trust, which under the environmental

[16] The CCH-Standard Federal Tax Report summarizes the conditions surrounding use of a settlement fund, not all of which have been described in this memorandum: "Under certain limited circumstances, an irrevocable payment to a court-ordered [sic] settlement fund will constitute economic performance of the liability. This rule applies only to qualified payments to a designated settlement fund with respect to which the taxpayer has made an election to have this treatment apply." ¶21,921.01 "A contribution of property to a designated settlement fund is treated as if the taxpayer sold the property for fair market value and donated the proceeds to the fund. Therefore, the taxpayer's deduction is limited to the property's fair market value. At the time the taxpayer contributes the property, the taxpayer recognizes gain or loss, and the fund's basis in the property is equal to the property's fair market value." ¶21,951.04

remediation fund rules is taxed only as income to the grantor and not as income to the trust and again as income to the grantor, if trust earnings are paid back to the grantor. If, on the other hand, trust earnings are not expected to be returned to the grantor, the grantor might want to avoid having the trust earnings treated as income to itself. A qualified settlement fund, as a trust fund, should avoid the requirement that funds paid directly to NRC must go into the Treasury, while providing a deduction to the taxpayer of the fair market value of property placed in the settlement fund. Therefore, it may provide the best possibility of satisfying the interests of both NRC and General Atomics. Additional research would be needed, however, to ensure that the trust could be drafted in such a way that NRC could issue instructions to the trustee concerning the use of the funds, without either abrogating its status under the Internal Revenue Code or triggering 31 U.S.C. § 3302.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 264, and 265

[SWH-FRL 1673-7a]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Consolidated Permit Regulations

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency is amending its regulations for the management of hazardous waste by: adding significant new sections to the standards applicable to the owners and operators of waste management facilities; adding financial requirements and amending closure and post-closure care requirements during the interim status periods for such facilities; and amending the permit regulations to comply with the facility regulations being published today.

Under the Resource Conservation and Recovery Act (RCRA) the Agency is required to establish a Federal hazardous waste management system. The first phase of that system was promulgated earlier this year. Today's publication, by setting forth requirements for location, closure and post-closure care, financial requirements, use and management of containers, and storage and treatment of hazardous waste in tanks, surface impoundments, and waste piles, will significantly improve the regulatory program by providing necessary standards around which permits may be granted for many treatment and storage operations. The additions to the permit regulations are necessary to enable the Agency's permitting officials to evaluate facility compliance with these regulations. The additions and changes to the interim status closure, post-closure care, and financial requirements were made to complete the interim status control program and in response to some public comments.

These regulations do not include the Part 264 requirements for ground-water monitoring, land treatment, landfills, incinerators, chemical, physical, and biological treatment units, thermal treatment facilities, injection wells, or the provisions for surface impoundments or waste piles used for disposal. These are still under preparation and will be issued at a later date.

DATES: Effective Date: These regulations, in the form published today, complete EPA's initial rulemaking on the subjects covered. They become effective on July 13, 1981, which is six months from the date of promulgation as RCRA Section 3010(b) requires.

Comment dates: EPA will accept public comments on these regulations as follows:

Deadline for Submission of Comments

All of these requirements are issued on an interim final basis. Comments on these regulations will be accepted until March 13, 1981. Comments in response to Requests in the Preamble will also be accepted until March 13, 1981.

ADDRESSES: Comments should be sent to Docket Clerk [Docket No. 3004], Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Docket: The public docket for these regulations is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. Among other things, the docket contains background documents which explain, in more detail than the preamble to this regulation, the basis for many of the provisions in this regulation.

Copies of Regulations: Single copies of these regulations will be available approximately 30 days after publication from Ed Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268 (513) 684-5362. Multiple copies will be available from the Superintendent of Documents, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA hazardous waste hotline, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (phone 800/424-9346, or in Washington, D.C., 554-1404).

For information on implementation of these regulations, contact the EPA regional offices below:

Region I

Dennis Huebner, Chief, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5775

Region II

Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0503

Region III

Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0980

Region IV

James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308 (404) 881-3016

Region V

Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148

Region VI

R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 767-2645

Region VII

Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307

Region VIII

Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221

Region IX

Arnold R. Den, Chief, Hazardous Materials Branch, 215 Freemont Street, San Francisco, California 94105 (415) 556-4606

Region X

Kenneth D. Feigner, Chief, Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101 (206) 442-1260

SUPPLEMENTARY INFORMATION:

Preamble Outline

I *Authority*
II *Structure of Subtitle C*
III *Status of the Subtitle C Rulemaking*
IV *Scope of Rulemaking*
V *Effect on Permitting*
VI *Regulation of Storage and Treatment Facilities*
A. Regulatory Approach to Storage
B. Regulatory Approach to Treatment
VII *Analysis of Rules*
A. General Facility Standards (Subpart B)
1. General Requirements for Ignitable, Reactive, or Incompatible Wastes (§§ 264.17 and 265.17)
2. Volatile Wastes
3. Location Standards (§ 264.18)
a. Seismic Considerations
b. Floodplains
c. Wetlands
d. Endangered and Threatened Species and Critical Habitats

e. Sole Source Aquifers
f. Buffer Zone
g. Regulatory Floodway
h. Coastal High Hazard Areas
i. Permafrost Areas
B. Closure and Post-Closure Care (Subpart G)
1. Interim Status Regulations (Part 265)
a. Deadline for Submission of Plans (§§ 265.112(a) and 265.118(a))
b. Maintaining Copies at the Facility (§§ 265.112(a) and 265.118(a))
c. Closure Plans and Amendments (§ 265.112)
d. Closure and Time Allowed for Closure (§ 265.113)
e. Post-closure Care and Use of Property (§ 265.117)
f. Post-closure Plan and Amendments (§ 265.118)
g. Notices (§§ 265.119 and 265.120)
2. General (Permitting) Regulations (Part 264)
C. Financial Requirements (Subpart H)
1. Financial Assurance for Closure and Post-Closure Care (Broad Issues)
a. Compliance Proceedings
b. Standby Trust Fund
c. Equity Among Mechanisms
d. Restricting Means of Financial Assurance
2. Trust Funds
3. Surety Bonds
4. Letters of Credit
5. Revenue Test for Municipalities
6. Financial Test and Guarantee
7. Variations in Use of Mechanisms
8. Other Mechanisms
9. Liability Requirements
10. Incapacity of Issuing Institutions
11. Applicability of State Financial Requirements
12. State Assumption of Responsibility
D. Containers (Subpart I)
1. Applicability (§ 264.170)
2. Condition of Containers (§ 264.171)
3. Containment (§ 264.175)
4. Compatibility (§§ 264.172 and 264.177)
5. Closure (§ 264.178)
E. Tanks (Subpart J)
1. Applicability (§ 264.190)
2. Design of Tanks (§ 264.191)
3. General Operating Requirements (§ 264.192)
4. Waste Analysis and Trial Tests
5. Inspections (§ 264.194)
6. Closure (§ 264.197)
7. Ignitable, Reactive, and Incompatible Wastes (§§ 264.198 and 264.199)
8. Secondary Containment
9. Tanks in the Water Table
10. Cathodic Protection
11. Air Emissions
F. Surface Impoundments (Subpart K)
1. Regulatory Approach
2. Applicability (§ 264.220)
3. General Design Requirements (§ 264.221)
4. General Operating Requirements (§ 264.222)
5. Containment Systems (§ 264.223)
6. Inspections and Testing (§ 264.226)
7. Containment System Repairs: Contingency Plans (§ 261.227)
8. Closure (§ 264.227)
9. Ignitable or Reactive Wastes (§ 264.229)
10. Incompatible Wastes (§ 264.230)
11. Freeboard (§ 264.221)
12. Liners and Leachate Detection, Collection, and Removal (§ 264.223)
13. Waste Analysis and Trail Tests
G. Waste Piles (Subpart L)
1. Applicability (§ 264.250)
2. Objectives and Organization
3. General Design Requirements (§ 264.251)
4. General Operating Requirements (§ 264.252)
5. Containment Systems (§ 264.253)
6. Inspections and Testing (§ 264.254)
7. Containment System Repairs: Contingency Plans (§ 264.255)
8. Closure (§ 264.258)
9. Waste Analysis
H. Permitting Requirements (Part 122)
1. Permit Modification (§§ 122.15 and 122.17)
2. Application Requirements for Part B (§ 122.25)
3. Permit Conditions (§ 122.29)
VIII *Regulatory Analysis*
A. Economic Analysis
1. Benefits
2. Costs and Impacts
a. Tanks
b. Surface Impoundments
c. Waste Piles
B. Reports Analysis
IX *Relationship to Polychlorinated Biphenyl Management*
X *OMB Review*
XI *Supporting Documents*
A. Background Documents
B. Guidance Documents

I. Authority

These regulations are issued under the authority of Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6905, 6912(a), 6924, and 6925.

II. Structure of Subtitle C

Subtitle C of RCRA creates a "cradle-to-grave" management system assuring that hazardous waste is safely stored, treated or disposed. Subtitle C creates a manifest system which is designed to track the movement of hazardous waste. Under regulations established by the Administrator of EPA, hazardous waste generators and transporters, as well as owners and operators of hazardous waste treatment, storage and disposal facilities are required to discharge certain responsibilities that insure the effective operation of the manifest system. In addition, owners and operators of treatment, storage and disposal facilities must comply with standards that "may be necessary to protect human health and the environment," which are established by EPA under Section 3004 of RCRA. These standards are generally implemented through permits, issued by EPA or authorized states, to owners and operators of hazardous waste treatment, storage and disposal facilities.

Section 3004 standards become effective 6 months after their promulgation by EPA. Under Section 3005(a), on the effective date of the Section 3004 standards, all treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit which implements the Section 3004 standards. Recognizing that not all permits would be issued within six months of the promulgation of Section 3004 standards, Congress created "interim status" in Section 3005(e) of RCRA. Owners and operators of existing hazardous waste treatment, storage and disposal facilities who qualify for interim status will be treated as having been issued a permit until EPA takes final administrative action on their permit application. Interim status does not relieve a facility owner or operator of complying with Section 3004 standards. The privilege of carrying on operations in the absence of a permit carries with it the responsibility of complying with appropriate portions of the Section 3004 standards (contained in 40 CFR Part 265).

To implement the various sections of Subtitle C EPA has issued several sets of regulations:

Part 260: Hazardous Waste Management System: general
Part 261: Hazardous Waste Management System: Identification and Listing of Hazardous Waste
Part 262: Standards for Generators of Hazardous Waste
Part 263: Standards for Transporters of Hazardous Waste
Part 264: Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities
Part 265: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities
Parts 122-125: Consolidated Permit Regulations (including permit regulations for hazardous waste facilities)

III. Status of the Subtitle C Rulemaking

The development of the hazardous waste regulations has been one of the most complicated rulemakings EPA has ever attempted. To give the reader an appreciation of the context surrounding today's promulgation it is useful to summarize EPA's rulemaking efforts of the last year:

1. Section 3010 Notice—This Notice was issued on February 26, 1980.

2. *Part 260*—This portion of the regulation, which includes general definitions used in the regulations and

conditions. (The major condition is proper operation of the facility and proper post-closure care in compliance with the facility's permit.) Section 107(k)(3) provides that the Fund "may" be used to pay costs of post-closure care, for facilities which meet the conditions noted above after the period of monitoring required by the RCRA regulations. Neither of these provisions implies that the 30-year post closure period in § 264.117 must be revised. However, in developing regulations under Superfund, EPA will be reviewing § 264.117 to determine whether any modification of the 30-year period or the procedures for a variance of the period should be amended.

Sections 264.119 and 264.120 (Notice to local land authority and Notice in deed to property) are modified somewhat from the Part 265 versions. However, elsewhere in today's Federal Register, EPA is proposing changes to §§ 265.119 and 265.120 to conform them to §§ 264.119 and 264.120, which are being promulgated as interim final. Both the Part 264 and the revised Part 265 versions will be finalized together after consideration of any comments submitted.

Reference in § 265.119 to "local land authority" has been clarified in § 264.119 to mean "local zoning authority or the authority with jurisdiction over local land use." In addition, the Part 264 regulations require that after the survey plat and record of wastes are filed, subsequent changes (e.g., as a result of reopening a cell or opening a new cell) must also be submitted.

In § 264.120, two changes from the interim status standards have been made. First, the notice in the deed must state that the survey plat and record of wastes disposed of have been filed with the appropriate local authority. Prospective purchasers of the property may then check the filed records to learn the precise location of wastes buried at the site.

Second, if the wastes and contaminated materials are removed from the site, the notation on the deed may be removed or, if that is not allowed by local authority, a notation may be added indicating removal of the waste. EPA is particularly interested in public comment on this issue. Would prospective purchasers of property want to know that hazardous wastes were once buried on the property even if the wastes were later removed? Would such information affect the market price and, if so, to what extent? If removal of the notation were undesirable, would that imply that even storers and treaters of hazardous wastes should be required to place notices in deeds?

C. Subpart H—Financial Requirements

Section 3004(6) of RCRA requires EPA to establish financial responsibility standards applicable to owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment. EPA has concluded that, at a minimum, financial responsibility performance standards are necessary and desirable to assure (1) that funds will be available for proper closure of facilities that treat, store, or dispose of hazardous waste and for post-closure care of hazardous waste disposal sites; and (2) that a pool of funds will be available during the operating life of the facility from which third parties can seek compensation for injuries to people and property resulting from operation of the facilities. In these regulations the Agency is establishing various requirements which are designed to meet those performance standards. Other needs in financial responsibility related to hazardous waste management are addressed by the recently passed "Superfund" law, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510 (December 11, 1980).

The need for assurance of financial responsibility for closure and post-closure care is indicated by the many instances of environmental damage resulting from abandonment of hazardous waste facilities and other failures by owners and operators to provide adequately for closure and post-closure care. (Several such cases are described in the Background Document for the financial requirements.) The likelihood of such a failure is increased by the fact that the economic value of the facility is either at a minimum or nonexistent when closure and post-closure care are expected to commence. For most disposal facilities, post-closure care must extend for 30 years beyond the operating life of the facility. EPA believes that a significant number of owners and operators will lack the ability to provide for adequate closure and post-closure care unless effective requirements for financial assurance are established.

Assurance that a pool of funds will be available from which third parties injured by the operation of a hazardous waste management facility can seek compensation is necessary and desirable, in the Agency's view, because of the potential for injury arising from the operation of those facilities. As discussed in detail in the Background Document, there are numerous instances in which third parties have suffered personal injury and property damage caused by the operation of hazardous waste management facilities. Consequently, the Agency is establishing a requirement that owners and operators must secure a liability insurance policy which covers both personal injuries and property damage resulting from their facilities. Moreover, the inherent risks associated with hazardous waste indicate that such a requirement is desirable.

The Agency has carefully considered numerous alternative financial responsibility mechanisms in developing these requirements. Their development involved a proposal of regulations in December 1978, a reproposal in May 1980, public hearings on the proposals, analyses of the many comments from the public, and a number of investigations of issues raised by commenters and by the Agency itself.

Under the first proposal, issued December 18, 1978 (43 FR 58995, 59006-7), the trust fund was the only means of assuring that funds would be available for closure and post-closure care. The closure trust fund had to be fully funded when established. The post-closure fund, however, was to be funded over the life of the facility or 20 years, whichever was shorter. The owner or operator was to estimate the amounts of the closure and post-closure funds based upon required plans for closure and post-closure care of the facility. The financial assurance provisions were essentially the same for general standards (to be used in issuing permits) in Part 264 and for interim status standards (which apply to existing facilities awaiting final disposition of their permit applications) in Part 265. Only trust funds were allowed because the Agency believed that only by setting money aside in a trust fund could owners and operators adequately assure availability of funds.

The Agency's first proposal also included liability requirements as general standards but not as standards for existing facilities with interim status. EPA based that decision on its belief at the time that insurance would not be available for facilities without permits. The amounts of required liability coverage were $5 million per sudden accident, and, for nonsudden accidents, $5 million per occurrence with a $10 million annual aggregate. In addition to insurance, self-insurance and "other evidence of financial responsibility" were allowed to satisfy the proposed requirement.

Many of the commenters on the original proposal said requiring the closure trust fund to be fully funded when established was so costly it could

put them out of business. A number of commenters also said that other financial mechanisms in addition to trust funds should be allowed. Some commenters thought the amount of the required liability insurance coverage greatly exceeded the level of risk associated with their facilities.

EPA reanalyzed these and other issues and developed a new proposal which was published May 19, 1980 (45 FR 33260-78). In this reproposal, the closure trust fund was allowed to build over the operating life of the facility or 20 years, whichever was shorter, because the Agency believed that requiring owners or operators to fully fund the closure trust immediately could cause some smaller firms to go out of business, and this would contribute to an expected capacity shortage in hazardous waste management. Consequently, both the closure and post-closure trust funds, had a pay-in period of up to 20 years. The reproposal also permitted owners and operators to use the following mechanisms other than trust funds to provide assurance of financial responsibility: surety bonds; letters of credit; a financial test; guarantees of the closure and post-closure obligations of an owner or operator by another entity which meets the financial test, a revenue test for municipalities, and State assumption of responsibility for closure and post-closure care or funding of these obligations. Also, if a State required specific financial assurance mechanisms for closure and post-closure care, the owner or operator could use those mechanisms to meet the Federal requirements as long as the State mechanisms were substantially equivalent to mechanisms specified by EPA.

The reproposed requirements for financial assurance for closure and post-closure care thus contained a range of options, all of which had been suggested by commenters on the first proposal. The principal consideration in selecting the mechanisms and determining their specifications was the effectiveness of the mechanism in assuring availability of sufficient funds when needed for closure and post-closure care. The Agency recognized, however, that in certain circumstances it may be necessary or desirable to balance other considerations against ready access to funds. As noted above, the Agency proposed a 20-year pay-in period for closure and post-closure trust funds because it believed that the environmental risk associated with a capacity shortage in hazardous waste management was greater than that associated with those instances in which there are insufficient funds for closure because the owner or operator is either bankrupt or has abandoned the site before the trust fund was paid up. The Agency also considered avoidance of unnecessary costs to the regulated community, the desirability of allowing flexibility in meeting the requirements, administrative burden on the Agency, and availability of the mechanisms.

The reproposal also included a requirement that owners or operators obtain liability insurance during interim status. Coverage for sudden accidents amounting to $1 million per occurrence with a $2 million annual aggregate was proposed. The Agency added this requirement because, contrary to EPA's previous belief that insurance would not be available for facilities without permits, further investigation showed that many of those firms which followed good business management practices already possessed liability insurance covering sudden accidents, and that it was readily available to other firms. The Agency did not propose requiring coverage for nonsudden accidents because its investigation indicated limited availability of such coverage to firms managing hazardous wastes prior to obtaining permits. (Comments were invited, however, on the desirability of requiring coverage for nonsudden accidents during interim status.) The lower level of coverage for sudden accidents (compared with the previous proposal) was based on a review of damage cases, typical levels of coverage, and State insurance requirements for hazardous waste facilities. As with financial assurance for closure and post-closure care, the reproposal allowed owners and operators to use State-required mechanisms and State guarantees to meet EPA liability requirements to the extent that the State mechanisms were substantially equivalent to EPA-specified mechanisms.

The originally proposed general standard for liability coverage was not included in the reproposal but the period of public comment on it was reopened.

At the same time that the reproposal was published (May 19, 1980), EPA issued final regulations, 40 CFR 265.140, 142, and 144 (45 FR 33243-44), which established interim status standards for estimating the costs of closure and post-closure care. (The effective date for these standards was changed from November 19, 1980, to May 19, 1981, by an amendment promulgated October 30, 1980 (45 FR 72040).) The final regulations exempted State and Federal governments from financial requirements imposed on owners and operators of hazardous waste management facilities. These regulations are discussed in the Background Document entitled Financial Requirements and in the Preamble to the May 19, 1980, publication. They are not discussed again here.

The following sections address the major issues and comments associated with the financial responsibility standards promulgated today.

1. *Financial Assurance for Closure and Post-Closure Care (Major Issues).* In the final regulations, as in the reproposal, the owner or operator of each hazardous waste treatment, storage, or disposal facility must establish financial assurance for its closure. The owner or operator of a disposal facility must also provide financial assurance for post-closure care. He may use one or more of the several mechanisms allowed by the regulations to meet those requirements. The amount of funds assured must at least equal the adjusted cost estimates.

For existing facilities, financial assurance must be established by the effective date of the Part 265 financial assurance requirements. For new facilities, assurance must be established as specified in Part 264 at least 60 days before hazardous waste is first received at the facility for treatment, storage, or disposal.

Commenters raised the following general issues:

a. *Compliance proceedings.* Commenters said that EPA should be able to direct the use of funds from trusts, surety bonds, letters of credit, and guarantees only after a final judicial determination of a violation or after agreement between EPA and the owner or operator, and that EPA should not be able to call in a bond or draw on a letter of credit after a notice of nonrenewal or cancellation unless a court order is obtained. These limitations are needed, commenters said, to protect the owner's or operator's right of appeal and his credit standing and to ensure that EPA does not expend funds improperly.

The procedures to be used for enforcing compliance with regulations under Subtitle C of RCRA, including Subpart H, are prescribed in Section 3008 of RCRA, which authorizes the Administrator to determine when violations of RCRA and the regulations have occurred and to issue compliance orders. Pursuant to Section 3008 an opportunity for a public hearing is provided before a compliance order or suspension or revocation of a permit becomes final.

The final regulations have clarified procedures relating to cancellation of

financial assurance devices. Although continuous availability of funds is a basic consideration of EPA in developing requirements for financial assurance for closure and post-closure care, the Agency recognizes the desire of financial institutions and surety companies for means of terminating letters of credit and bonds issued on behalf of owners and operators. Consequently the final regulations include provisions for cancellation under limited circumstances. However, the owner or operator will be deemed to be without financial assurance and in violation of these regulations upon receipt by EPA of a notice of cancellation or nonrenewal, and EPA thereupon will begin compliance proceedings under Section 3008 of RCRA. In the event the owner or operator cannot satisfy a compliance order requiring alternate financial assurance, EPA will require funding of a standby trust (described below) by the surety or issuer of the letter of credit.

In order to assure that funds will be available for closure and post-closure care, and that initiation of compliance proceedings does not immediately precipitate termination of surety bonds and letters of credit, all such instruments must provide that no termination shall occur while compliance proceedings are pending, irrespective of the subject matter of the compliance proceedings.

b. *Standby trust fund.*

The final regulation requires that owners and operators who obtain letters of credit or surety bonds to provide the required financial assurance must also establish a standby trust fund at the same time. Under the terms of the letter of credit or surety bond, any funds drawn under those instruments are to be placed directly into the trust fund by the institution making the payment. The Agency is imposing this requirement because without such a depository mechanism any funds drawn under those instruments which are payable to the Regional Administrator would have to be paid into the U.S. Treasury and could not be used specifically to pay for closure and post-closure care of the facility (see 31 U.S.C. § 484). EPA plans to seek authority from Congress to directly receive and disburse funds derived from financial assurance mechanisms under RCRA. If EPA obtains that authority, owners and operators would no longer be required to establish standby trust funds. In the reproposal of May 19, 1980, the Agency allowed both trust funds and escrows to be used to hold funds drawn on letters of credit and surety bonds (escrows for closure funds, trusts for post-closure funds), and they did not have to be established before the time they were needed. Further analysis indicates that trusts are preferable to escrow accounts (see discussion of escrows in section 8 below) for this purpose and that they must be established when the letter of credit or surety bond is obtained to assure that the necessary depository mechanism is available if needed.

c. *Equity among mechanisms.*

Several commenters said that, from an equity standpoint, EPA should allow all mechanisms, not just trust funds, to be built over 20 years.

EPA is allowing owners or operators to select from a variety of financial mechanisms to meet the requirements of these regulations. It is doing so to minimize their cost. Since an owner or operator is free to choose from among the devices, he may select that alternative which seems most advantageous. Thus there is no inequity created.

d. *Restricting means of financial assurance.*

Several commenters said that EPA should not limit owners and operators to the specified mechanisms but instead should allow them to demonstrate financial assurance by any appropriate means. The Agency has decided not to adopt that approach because the implementation of such an open-ended regulation would impose an intolerable administrative burden on the Agency, especially in light of its limited experience and resources in the area of evaluating financial mechanisms. The Agency expects that a large number of owners or operators might seek to demonstrate financial assurance by alternative mechanisms if they are allowed to do so. The Agency believes that in such an event, mechanisms that do not adequately assure that funds will be available in a timely manner will inadvertently be accepted. This will result in inadequate protection of human health and the environment and, in addition, an inconsistent and possibly inequitable administration of these requirements. Consequently, the Agency concluded that it must require specific mechanisms for financial assurance and has allowed those to be used which adequately provide financial assurance and are feasible. EPA will continue to be receptive to proposed additions to these mechanisms and may add to, subtract from, or alter the currently allowed mechanisms after it examines such suggestions and its experience in implementing these regulations.

Some commenters suggested that requiring standard language for trusts and other instruments is a mistake, since financial institutions have different informational requirements. EPA believes that standard language is necessary for the same reasons that standard mechanisms are needed. The Agency simply does not have the resources or expertise to review every trust or other instrument to determine whether it adequately assures the availability of funds for closure or post-closure care. The Agency believes that the mechanisms allowed by the final regulation will be acceptable to most, if not all, financial institutions. They were developed in consultation with the American Banking Association, the Surety Association of America, other trade associations, financial institutions, and other financial experts.

2. *Trust Funds.* The trust provisions of the final regulation include several changes from the provisions of the reproposal. The most significant change is a redesign of the funding sequence.

As described above, under the first proposal issued December 1978 the Agency required that the closure trust fund be fully funded when established. The Agency selected the fully funded trust to provide financial assurance whether closure takes place as planned or closure becomes necessary prematurely due to economic difficulty or as a result of a government agency's order based on problems associated with the operation or maintenance of the facility. Immediate full funding of the trust fund represents a significant financial burden to the regulated community, however, in that it requires the owner or operator to set aside a large sum of capital at one time. This burden assumes an added significance under current tax laws, which do not allow payments into these trusts to be considered a deductible business expense because no expense occurs in a tax sense until the funds are used for closure.

The environmental impact of this economic burden might be substantial. It could tend to drive companies out of hazardous waste management and discourage new companies from entering the field, thus reducing the national capacity for hazardous waste disposal at a time when we may be short of sites which are acceptable from a health and environmental standpoint.

The Agency responded to this problem in the reproposal of May 19, 1980, by allowing a pay-in period of 20 years or facility life, whichever is shorter, for both closure and post-closure trust funds. Also, as already noted, several alternative mechanisms were allowed which are expected to be substantially less costly to the regulated community.

In the final regulation for interim status, EPA continues to allow both closure and post-closure trust funds to build over 20 years or facility life, whichever is shorter. Interim status is supposed to be a period of transition for hazardous waste facilities from no Federal hazardous waste regulation to fairly complex Federal hazardous waste regulation. As such, EPA wants the transition to be gradual. The Agency has set the buildup period for trust funds to prevent the dislocations and capacity problems that might occur from a faster buildup of trust funds.

For interim status facilities which become permitted, the owner or operator must fund the balance of the trust funds over the term of the initial permit (a maximum of 10 years under § 122.9 of this Chapter). At the end of this term, the Agency may decide not to renew the permit. Based on that consideration, the Agency decided to establish a pay-in period equal to the term of the permit. The Agency does not want to be in the position of having to consider whether to allow a poorly managed site to remain in operation so that it could continue to build its trust funds to afford closure and post-closure care. The trust should therefore be fully funded at the end of the term of the permit to assure that proper closure and post-closure care can be carried out.

EPA will require that trust funds for new facilities also be built over the life of the permit. New facilities, like existing facilities, present a potential for premature closure during the fund buildup period. Again, an apparent simple solution is full funding up front. The Agency need not be concerned about dislocations induced among new facilities by too stringent a pay-in requirement as it does with existing facilities. A decision for immediate full funding, however, sets up a significant differential in RCRA compliance costs between new and existing facilities whose owners or operators need to use trusts to meet the financial requirements. EPA believes it may be counterproductive to establish an immediate pay-in requirement for new facilities, especially when old facilities can build trusts over time. This would encourage the continued use of existing facilities and discourage the building of new sites conforming to current technical standards.

The 20-year pay-in period, which was in the reproposal and is now allowed only during interim status, was criticized by some commenters. They pointed out that the public might have to bear a significant portion of total closure and post-closure costs over that time due to the failures of firms. With a faster buildup, however, there are also closure and post-closure obligations which would fall to the public from firms which close immediately when faced with the higher costs. The Agency believes that some closure and post-closure costs will be borne by the public regardless of the pay-in period.

In an analysis prompted by the comments on the pay-in period, EPA found that, because of uncertainties in the expected normal business failure rate for firms that will be getting trust funds and the expected rates of closure induced by different pay-in periods, the optimum pay-in period could be anywhere from 5 to 20 years. If the Agency required a buildup rate during interim status faster than 5 percent a year, and subsequent evidence of bankruptcy rates showed that the annual 5 percent buildup was, in fact, justified by the data, it would be too late to prevent induced closures by reducing the pay-in rate. On the other hand, if EPA chose the 5-percent rate and bankruptcy data showed a higher rate to be more appropriate, the Agency could adjust the buildup rate at little cost. Moreover, the Agency estimates that the amount of closure and postclosure expenses to be paid for by the public does not vary greatly from a 5 percent per year pay-in rate to a 20 percent per year rate, but the additional cost to the regulated community is substantial for the higher rate. This analysis, then, is consistent with the Agency's decision to allow slower pay-in period during interim status at this time.

EPA recognizes that full assurance of funds for closure and post-closure care will not be provided through the trust fund in the event of premature closure. EPA is presently studying a variety of private sector and governmental programs, including mutual and pooled fund approaches, which will address this problem. The Agency welcomes comments in this regard. It is likely that EPA will request legislation in this area from the Congress in the near future. In the event a legislative, administrative, or private sector remedy to the problem of premature closure is not forthcoming, it is likely that EPA will review the present trust fund mechanism and require a significantly shorter pay-in period.

Among the other changes from the reproposal was the addition of qualifications for trustees. In the reproposal, a "bank or other financial institution" could serve as the trustee. In the final regulation, trustees must be banks or other financial institutions that have authority to act as trustees and whose trust operations are regulated and examined by Federal or State agencies. EPA made this change because institutions that are examined and regulated by Federal or State agencies must meet certain standards that should increase the reliability and security of trustee institutions.

In the reproposal, the Agency did not establish certain specific requirements regarding the trust agreement (for instance, how monies in the trust fund were to be invested) because it believed that these issues would either be covered by State trust law or were best resolved by agreement between the owner or operator and the trustee.

Some commenters strongly objected to this approach and said that financial institutions would not act as trustees for these trusts if the trust instrument did not contain provisions specifying the responsibilities and rights of the trustees. The Agency developed a standard trust agreement which incorporated the necessary provisions with the assistance of the American Bankers Association and other commenters. One of the clauses which was amended was the investment clause. In developing this clause, the Agency's primary concern was protection of the corpus of the fund. A secondary concern was to allow the trustee to invest the funds to earn a rate of return that will at least keep up with inflation. This concern is especially important for the post-closure period. In the final regulation the trust agreement prohibits investment in the securities of the owner or operator and their affiliates, but otherwise generally allows investments in accordance with a "prudent man" rule. The rule requires the trustee to invest with the judgment and care that persons of prudence would exercise in managing an enterprise of like character and aims. Investment in certificates of deposit or other time or demand deposits with the trustee institution is specifically allowed to the extent they are insured by an agency of the State or Federal government. EPA added this last provision because it believes that financial institutions may be more willing to accept small trust funds if the owner or operator agrees to such an investment.

EPA's concern about the willingness of financial institutions to act as trustees of small trust funds was based on comments by many of the larger banks in the country. Some closure cost estimates will be under $10,000. Many of the larger banks said they would not act as trustees for funds containing only small amounts and quoted acceptable

minimums which ranged from $20,000 to $5 million. Small trust funds, in their view, are not worthwhile because their administrative costs and potential legal expenses outweigh potential profits. However, some of the smaller banks said they would accept small trust funds and believe they are comparable to the Individual Retirement Accounts (IRA) and Keogh accounts that are established to provide retirement income. The Agency was informed that more banks would be willing to act as trustees for the smaller trust funds if the funds could be commingled for investment purposes but that such commingling might not be consistent with Federal securities laws. To encourage financial institutions to act as trustees for small trusts, EPA requested the Securities and Exchange Commission to issue a "no action" letter concerning commingling. The Agency received such a letter from SEC dated October 20, 1980.

3. *Surety Bonds.* In the May 19, 1980, proposal, three types of surety bonds were allowed. They guaranteed performance of closure, or payment of a lump sum into a post-closure trust fund at the time of closure, or performance of post-closure care. It was intended that such bonds would be allowed for both interim status and general standards. It has become apparent, however, that performance bonds are not appropriate for interim status. Performance bonds are intended to guarantee performance of a specified duty. During interim status, closure and post-closure plans will not normally be closely examined by the Regional Offices until shortly before closure. The Regional Administrator at such time may find that major changes are called for in the closure or post-closure plans. The actual required performance for the particular facility therefore may not be specified in any detail during most of the term of the bond. Consequently in the final regulations for interim status only surety bonds that guarantee payment into standby trust funds for closure and post-closure care are allowed. In the general standards, performance as well as financial guarantee bonds are allowed since the closure and post-closure plans will be reviewed as part of the permitting process.

Surety companies and other commenters identified two features of the closure and post-closure obligations that will discourage sureties from writing the bonds: the obligations are for terms much longer than surety bonds have traditionally been written for, and the costs are not set—they will shift with inflation and changes in the closure and post-closure plans. The Agency has not found a way to structure the bonds so as to reduce the effects of these basic conditions without jeopardizing the adequacy of financial assurance provided by the bonds.

Under the cancellation provisions in the reproposal, the surety could cancel a bond only if at least 90 days' advance notice is given. If during the first 30 days after the notice the owner or operator failed to establish other financial assurance, the Regional Administrator could order closure of the facility, thus triggering the bond guarantee. The surety could therefore cancel successfully only if the owner or operator could establish other financial assurance.

In the final regulations, the cancellation provisions have been revised: (1) The bond cannot be cancelled while a compliance procedure is pending. (2) Nonconformance with the financial assurance regulations is deemed to commence whenever continuity of financial assurance is threatened due to impending cancellation of the bond by the surety (i.e., upon receipt of a cancellation notice from the surety). (3) The role of Section 3008 procedures in regard to compliance orders, closure orders, and collection of the penal sum after noncompliance has been clarified. In particular, if the owner or operator fails to establish financial assurance in the period allowed by the compliance order, the surety must deposit the amount of the penal sum into the standby trust fund established by the owner or operator. The latter change was made so that financial assurance can be maintained without the need to require closure.

As these bonds represent a new risk experience for the surety companies, availability will be limited at first, with economically stronger companies more likely to receive coverage. As surety experience with these facilities and bonds increases, availability may increase as well.

4. *Letters of Credit.* A letter of credit is an agreement by the institution issuing the letter that it will make available to the beneficiary a specific sum of money during a specific time period on behalf of its customer. The beneficiary can draw on the credit by presenting to the issuing institution the documents specified in the letter. In the final regulation, an owner or operator may satisfy the financial assurance requirement by obtaining the issuance of a letter of credit, addressed to the Regional Administrator, in the amount which equals or exceeds the closure or post-closure cost estimate. The term of the letter of credit must be at least 1 year, and it must contain a clause which provides for automatic extensions. The issuing institution may terminate the letter only by sending a notice of nonrenewal to the Regional Administrator and to the owner or operator at least 90 days prior to the automatic renewal date. Like the surety bond, the letter of credit can be drawn on if the Regional Administrator determines that the owner or operator has failed to meet closure or post-closure requirements or following a notice of nonrenewal and a Section 3008 determination that the owner or operator is in violation of the financial requirements. By the terms of the instrument, the letter cannot be cancelled while a compliance procedure against the owner or operator is pending.

The issues raised regarding letters of credit were, for the most part, the same as those for surety bonds. Some commenters suggested that the term is too long, that the owner's or operator's obligations are subject to increases thus requiring frequent changes in the letter of credit, and that such letters of credit are rarely if ever written. As with the bonds, it appears that only large, highly creditworthy firms may be able to obtain these instruments on an unsecured basis.

In the reproposal, letters of credit could be used to assure funds for closure, assure payment of a lump sum into a post-closure trust fund at the time of closure, or assure availability of funds during the post-closure period. The reproposal contained a separate set of requirements for each of these uses. In the final regulation the letter of credit may be used for the same purposes, but one set of requirements covers both instances in which letters of credit are used to assure funds for post-closure care.

Numerous commenters said that the letter of credit form in the reproposal should be simplified. They suggested that detailed references to the regulations be eliminated because they were concerned that the references might be interpreted to impose a responsibility on the issuing institution to assure that the owner or operator complies with the regulations. Many bankers also suggested that EPA delete from the letter all references to the escrow account into which funds drawn under the instrument would be deposited. With the aid of the American Bankers Association, other institutions, and a legal expert on letters of credit, the Agency developed a less complex letter of credit and eliminated from it most references to the regulations.

While the letter contains a reference to the standby trust into which funds paid under the letter will be deposited (rather than the escrow account specified in the reproposal), this was done to ensure a direct transfer into the owner's or operator's trust fund and to avoid problems associated with the requirements of 31 U.S.C. 484.

Under the reproposal, only letters of credit issued by Federal Reserve System (FRS) banks would be accepted by the Agency. EPA proposed this restriction because it believed that FRS banks had greater stability and reliability and that only member banks could issue letters of credit for periods longer than 1 year. The Agency learned, however, that nonmember banks can issue letters of credit for more than 1 year. Moreover, there appears to be no significant difference in stability and reliability between FRS banks and other financial institutions which are examined and regulated. Consequently, in the final regulation, letters of credit from any financial instititution which has authority to write letters of credit and whose letter-of-credit operations are regulated and examined by Federal or State authorities are acceptable.

5. *Revenue Test for Municipalities.* In the reproposal, municipalities, as defined in RCRA, could demonstrate financial assurance by passing a revenue test. A municipality passed the test by having annual general tax revenues which were 10 times the cost estimates to be covered. The test was intended to identify those local governments which have a tax base sufficient to readily support the costs of closure and post-closure care.

The proposed revenue test was the subject of numerous comments. While some commenters thought it was a reasonable approach, others felt that municipalities should be required to provide the same forms of assurance that other entities must provide. They cited the delays in funding of closure that could occur if cities failed to plan adequately for meeting closure costs.

Several commenters thought that a test which requires a local government to have only 10 times the cost estimates was inadequate. They contended that many cities would find it extremely difficult to reallocate in any year 10 percent of their budget to cover closure and post-closure costs. One commenter suggested that the multiple be increased to 20.

Several commenters objected to the test because it limited revenues to be counted to the property, income, and sales taxes. They suggested that fees, contract payments, and any other income should be included. Other commenters suggested alternatives to the test be allowed, including municipal bond ratings, bond pledges, annual audits, and requirements for enterprise accounting.

Because of the complexity of the issues regarding the revenue test, the Agency could not analyze them adequately in time for this promulgation. The Agency expects to announce its decision on whether it will promulgate the revenue test within the next few months. At the same time the Agency will also announce its decisions regarding the financial test and self-insurance, which are described below. The Agency decided to proceed with today's promulgation of financial responsibility standards despite the fact that these key decisions are yet to be made because of the need to begin assuring financial responsibility for hazardous waste management and also the need to meet the court-ordered schedule for issuing RCRA regulations. In planning how they will meet the financial responsibility requirements promulgated today, owners and operators should not consider the revenue test, financial test, or self-insurance as available or imminently available options at this time.

6. *Financial Test and Guarantee.* The proposed financial test allowed firms to meet the financial assurance requirement by demonstrating they had more than $10 million in net worth in the U.S., a ratio of total liabilities to net worth not greater than 3 to 1, and net working capital in the U.S. of at least two times the value of all their closure and post-closure cost estimates. An entity meeting the financial test could also guarantee closure and post-closure obligations of another entity. The Agency received many comments on this issue. They included suggestions that the test was too stringent, that it was too lenient, and that the criteria were either inappropriate or arbitrary. They suggested different values for the criteria and numerous alternative criteria such as bond ratings, a cash flow test, positive net income, the ratio of quick assests to current liabilities, and fixed assets in the U.S. (rather than net worth or working capital in the U.S.). Many commenters also raised questions about the proposed requirements for establishing that the test criteria were met. As with the revenue test, the Agency could not complete its study of the issues in time for this promulgation. As noted above, the Agency's decisions regarding the financial test and the guarantee based on the financial test will be announced at the same time as the decision on the revenue test.

7. *Variations in Use of Mechanisms.* The reproposal allowed owners and operators to use more than one type of mechanism to provide financial assurance for a facility, to use one mechanism to cover multiple facilities, and to use one mechanism to cover both closure and post-closure care. A number of commenters expressed approval of these provisions because of possible savings in costs to the regulated community. The final regulations allow these variations with some qualifications and clarifications.

An owner or operator using multiple instruments may include a surety bond guaranteeing payment but not a surety bond guaranteeing performance of closure or post-closure care. The latter type of bond is excluded because of the potential complexity of combining the performance option in the bond with funds from other instruments in case of default.

The final regulation states that if an owner or operator uses a trust fund and a letter of credit or surety bond, he may use the trust fund in place of the standby trusts required for letters of credit and surety bonds. If an owner or operator uses only letters of credit of surety bonds, only one standby trust fund is required for all instruments. Requiring a separate standby trust for each instrument means added costs for the owner or operator and added administrative burden for the Agency.

A letter of credit may not be used to cover the facilities in more than one Region because increases and decreases in the coverage of the credit, even if they concern only one of the facilities covered, would in some cases depend on the consent by all the Regional Administrators who are addressees of the letter. Such procedures are likely to delay the change in the credit amount and could add to the administrative burden of the Regional staff. The restriction to one Region does not apply to the other instruments, since only the approval by the Regional Administrator for the Region in which the affected facility is located need be obtained in order to decrease the coverage, and increases may be made without prior approval or return of existing instruments.

Combining financial assurance for closure and post-closure care in one instrument is allowed for the letter of credit and the trust fund but not for surety bonds. Unlike the other instruments, the surety bonds must, in order to specify the conditions of the guarantees, differentiate between what is to be done to assure closure and post-

closure care. The Agency believes that combining the closure and post-closure language in one bond form would add to its complexity and risk confusion.

8. *Other Mechanisms.* EPA believed that escrow agreements might be useful and therefore actively solicited information about them. Most of the commenters said there is little difference between trust funds and escrows and therefore there is little point in offering both. Trust funds appear to be preferable because the law of trusts places obligations upon trustees to protect the interests of the beneficiary (i.e., EPA in this case). An escrow agent is responsible only for what is specified in the escrow agreement. The Agency believes it would be extremely difficult to draft an escrow agreement that adequately specifies all the actions that the Agency would want the escrow agent to take in all situations to assure that the instrument serves its intended purpose. Some commenters said that if the escrow agreement is carefully worded escrowed funds could be safer from creditors' claims than trust funds, but other commenters and the Agency's analysis indicated that trust assets are better protected. Under trust law, legal title to property in a trust is transferred from the grantor to the trustee. With an escrow agreement legal title is not transferred to the escrow agent; since the grantor retains legal title while property is in escrow, such property is more likely to be subject to creditor's claims than property in a trust. Some commenters said fees for escrow accounts tend to be lower than for trusts, but other commenters said that, if an escrow agreement were written to be comparable to the trust agreement, the fees would also be comparable. Based on the information obtained, EPA believes trust funds are preferable to escrows and has decided not to add the escrow agreement as an option.

Commenters' suggestions for other financial assurance mechanisms included allowing owners and operators to deposit funds, certificates of deposit, or other property with EPA. EPA currently lacks authority, however, to directly receive and spend funds for closure and post-closure care.

9. *Liability Requirements.* The final interim status and general standard liability regulations require owners or operators of hazardous waste treatment, storage, and disposal facilities to demonstrate financial responsibility for claims arising from sudden accidents. In addition, owners or operators of surface impoundments, landfills, and land treatment facilities will be required, over a 3-year phase-in period, to demonstrate financial responsibility for claims arising from nonsudden or gradual occurrences.

Several important changes are incorporated into the final liability requirements as a result of comments received and further analysis by the Agency. First, EPA is modifying its approach to nonsudden liability coverage by extending the requirement for nonsudden coverage to interim status facilities, limiting the initial applicability of this requirement to impoundments, landfills, and land treatment facilities only, and phasing in the nonsudden requirement over 3 years. Second, EPA is reducing the amount of liability insurance required to $1 million per occurrence with a $2 million annual aggregate for sudden events and to $3 million per occurrence with a $6 million annual aggregate for nonsudden liability coverage. Third, EPA is adding a variance procedure to the final requirements to allow owners or operators who can demonstrate that the levels of required coverage are not consistent with the degree and duration of risks at their facilities to seek an adjusted level of required coverage. Finally, EPA is including provisions to allow the Regional Administrator to increase the level of required coverage if the degree and duration of risks at a facility or group of facilities warrants a higher level of coverage and to extend the nonsudden requirement to treatment and storage facilities that pose risks of nonsudden damage.

Many of these changes reflect EPA's commitment to rely to the extent possible on the insurance industry to provide liability coverage for hazardous waste management facilities. EPA believes that liability insurance is the most appropriate mechanism for assuring the public that there will be a pool of funds available from which third parties can seek compensation for claims arising from the operations of hazardous waste management facilities. On the other hand, EPA recognizes that liability coverage for these facilities, particularly for nonsudden occurrences, poses special problems to the insurance industry because of the lack of experience with a regulated waste management industry and the potential hazards associated with managing hazardous wastes. These problems may jeopardize the wide availability of liability insurance to the regulated community.

By phasing in the nonsudden requirement over 3 years, starting initially with larger firms which the Agency believes can more readily obtain nonsudden coverage, and by requiring a minimum level of coverage that EPA believes will protect human health and the environment and allow smaller insurers to provide the required coverage, EPA is seeking to encourage a broad market for nonsudden liability coverage. EPA intends to monitor the implementation of the nonsudden insurance requirement during the phase-in period, and will consider steps to increase the availability of nonsudden coverage or alternatives to an insurance requirement if it appears that the insurance industry is unable to provide the required coverage.

The changes in these final regulations also reflect EPA's wish to extend protection to the public during the interim status period. EPA had not previously included a nonsudden liability requirement in the interim status standards since it believed that liability insurance for nonsudden events during interim status would not be available. Recent discussions with the insurance industry indicate that nonsudden coverage will be offered to interim status facilities, but it will take several years for the industry to respond fully to the demand for this coverage. The insurance industry has indicated that several of the larger waste management firms already have nonsudden coverage, and that larger firms will, in general, be able to obtain this coverage more readily than smaller firms.

EPA believes that the benefits of requiring nonsudden coverage during interim status are substantial. Many commenters pointed out that interim status facilities pose risks of nonsudden accident that are the same or even greater than that posed by permitted facilities. Other commenters argued that the insurance industry, through its routine inspection and monitoring practices, would provide valuable oversight of hazardous waste management facilities during the interim status period, when EPA itself will be devoting the bulk of its resources to issuing facility permits. EPA agrees with these comments.

In preparing these final liability requirements, EPA has reconsidered both the amount and type of coverage required for hazardous waste management facilities in its effort to tailor regulations consistent with the degree and duration of risks associated with the ownership and operation of these facilities. Many commenters objected to EPA's initial proposal of $5 million liability coverage per occurrence, arguing that this amount was too high and did not reflect the risks posed by their operations. Other

commenters stated that their storage or treatment operations posed no risk of nonsudden accident.

EPA's analysis of damage cases involving waste management facilities confirms that $5 million coverage may be too high in many instances, and that surface impoundments, landfills, and land treatment facilities pose the greatest threat of nonsudden accident. These final regulations require $1 million per occurrence coverage for sudden events and $3 million per occurrence coverage for nonsudden events, and limit the nonsudden requirement to surface impoundments, landfills, and land treatment facilities (e.g., the same facilities for which ground-water monitoring is required). The Agency believes that the degree and duration of risks associated with waste management facilities, with very few exceptions, necessitates at least the amount of liability coverage required by these regulations. Hence, while EPA has included a variance in both the interim status and general standards for owners or operators who demonstrate that the level and type of required coverage are inconsistent with the degree and duration or risks associated with their facilities. EPA expects that very few facilities will be eligible for such a variance. The burden of proving that such a variance is warranted will be on the owner or operator requesting it. To some extent, variations in degree and duration of risk will be reflected in the premiums charged by insurance companies.

The Agency recognizes that many facilities may pose risks that warrant higher levels of liability coverage than the minimum level required. Also, some treatment and storage facilities may pose nonsudden risks. The final regulations therefore allow the Regional Administrator to make upward adjustments of the level of required coverage and to extend the nonsudden requirement to a treatment or storge facility. In making these adjustments, the Regional Administrator will take into consideration factors such as the type of wastes being handled at the facility, the nature of the treatment, storage, or disposal operation, the proximity of the facility to population centers, the quantity and use of ground water underlying the facility, and the number of facilities covered by one insurance policy. Furthermore, EPA intends to evaluate the level of coverage as experience with a regulated waste management industry accumulates. The Agency believes the $1 million/$2 million level for sudden accidents and $3 million/$6 million for nonsudden accidents are proper starting points but may consider revising the required levels if experience or inflation seem to warrant such revisions.

Several other changes are also incorporated into the final liability requirements. EPA had previously proposed limiting the allowable deductible in an owner's or operator's insurance policy. The final regulations set no limit on the deductible but instead require an agreement by the insurer, through an EPA-approved policy endorsement, that the insurer will pay honored claims within the limits of the policy. This allows the insurer and the insured to negotiate a deductible under which the insured will reimburse the insurer for claims paid but assures the public that "first-dollar" coverage will be available regardless of the financial condition of the insured.

EPA had also previously proposed self-insurance requirements for permitted facilities which limited self-insurance to 10 percent of equity; no self-insurance provisions were included in the proposed interim status liability requirements. EPA reevaluated these proposals and is now considering self-insurance provisions for inclusion in both the interim status and general standards. EPA expects to decide whether to add self-insurance provisions to the liability requirements within several months. If self-insurance provisions are adopted, EPA intends to adjust their effective date to make it conform to the effective date of the liability reqirements published today.

Finally, the Agency requests comments on several potential issues in the liability requirements. These issues concern the limits of coverage of liability policies as defined by the exclusions in the policies. EPA has reviewed several insurance policies which could be used to satisfy the requirements of these regulations and finds that the policies typically exclude certain events or damages from coverage. These exclusions may include liability respecting genetic damage and liability arising from noncompliance (either knowing or unknowing) with applicable laws, rules, or regulations. The Agency is concerned that these exclusions may significantly limit the scope of coverage of the policies, and requests comments on whether EPA should allow such exclusions in policies obtained to satisfy the requirements of these regulations.

10. *Incapacity of Issuing Institutions.* A section was added to the final regulations (§§ 264.148 and 265.148) to make clear what must be done by the owner or operator when the institution issuing a bond, letter of credit, or insurance policy goes bankrupt or is otherwise incapacitated. The owner or operator is required to obtain other financial assurance or liability coverage within 60 days.

11. *Applicability of State Financial Requirements.* The Agency recognizes that differences between State and Federal financial responsibility requirements might result in duplication and unnecessary costs to owners and operators. In those States that receive authorization to operate a hazardous waste regulatory program in lieu of the Federal program, there will be no duplication since only the State's requirements would apply. However, in those States which have not obtained Federal authorization, the owners and operators would be subject to Federal hazardous waste regulations and also to any State hazardous waste regulations that are in effect. To avoid unnecessary duplication and costs, the Agency included a section in the reproposed regulations (§ 265.149) that allows owners or operators to use State mechanisms to meet the Federal financial requirements if such mechanisms provide assurances that are substantially equivalent to those of mechanisms specified in the Federal requirements.

The Agency has retained this provision in the final regulations with several changes. Where the owner or operator was allowed to use "State-authorized" mechanisms, the term has been changed to "State-required." This means that the owner or operator may use a State mechanism if that is required by the State; if he has the option to meet the State requirements by using mechanisms specified in these regulations, he must use that option. This change will reduce the burden upon EPA to evaluate various mechanisms allowed by States to determine their equivalence to Federal mechanisms. Another change was the addition of a requirement that evidence of the establishment of a State-required mechanism be sent to the Regional Administrator so that the Agency could review the adequacy of these mechanisms. Inclusion of a reporting requirement was overlooked in the reproposal. A third change was substitution of "equivalent to or greater than" for "substantially equivalent" in referring to the financial assurance that the State mechanisms must provide. The Agency intends that they should not be less effective than the EPA-specified mechanisms and has decided that the revised wording better conveys this intent.

12. *State Assumption of Reponsibility.* In the May 19, 1980, proposal, if a State assumed legal responsibility for an owner's or operator's compliance with the closure or post-closure requirements or liability requirements or assured that funds would be available to cover such requirements, the owner or operator would be in compliance with the requirements if the State's assurances were substantially equivalent to meeting the requirements. The owner or operator had to send a letter to the Regional Administrator describing such guarantees and citing the State regulations providing for the guarantees. These provisions were part of the section covering applicability of State financial requirements. Since the State guarantee is potentially an important mechanism, and does not belong under the heading for State financial requirements, the State guarantee provisions have been put into a separate section (§§ 264.150 and 265.150). In the final regulations, the notification to EPA that the facility is coverd by a State guarantee must be signed by the State agency rather than the owner or operator, to save the need for verification by EPA. "Substantially equivalent" has been changed to "equivalent to or exceed" to make it clear that the degree of assurance should be no less than that provided by the other mechanisms allowed by these regulations.

D. Subpart I—Containers

The container management regulations promulgated on May 19, 1980 included only interim status rules. The general requirements promulgated today include the same requirements as the interim status regulations. The rationale for their inclusion is as discussed in the May 19, 1980 Preamble and in the Background Document published in support of the May 19 regulations. Some minor changes have been made in the course of making the interim status standards part of the general requirements. In some cases, the Agency plans to make the same changes to the interim status requirements.

In addition to counterparts to the interim status standards, the general regulations include containment requirements and a closure provision. These are discussed in the following paragraphs in the same sequence they appear in the regulations.

1. *Applicability* (§ 264.170). On November 25, 1980 the Agency amended the Part 261 requirements (45 FR 78524–78529) to clarify when and to what extent empty containers are hazardous wastes. This was done largely by incorporating what had been widely scattered provisions into a new § 261.7. Basically, this amendment says that the residues left in a container, when it has been emptied in accordance with specified procedures, are not considered to be hazardous wastes. Thus, these residues and the containers (drums, etc.) which hold them are not subject to these Part 264 requirements.

The interim status requirements published May 19, 1980 contained a comment referring to the provisions of Part 261. It was located at the end of § 265.173 on the management of containers. The Part 264 counterpart of that requirement has been modified to reference the new § 261.7 and it has been located in § 264.170, the applicability section. Since it discusses a limit on which containers the Subpart I regulations are effective, it belongs more appropriately in the applicability section. The Agency plans to make similar changes to the interim status comment currently in § 265.173.

2. *Condition of Containers* (§ 264.171). This regulation requires that hazardous wastes be taken out of leaking or corroding containers and that they be recontainerized or otherwise appropriately handled. This is designed to avoid releases to the environment.

EPA believes that a design standard for containers would be a useful addition to or replacement for this performance standard. The present regulation is general which may lead to inconsistent interpretations of the term "good condition". A design standard should be easier to interpret.

The Agency believes also that the requirements for design of containers specified in the Department of Transportation regulations for transportation of hazardous materials may be appropriate for purposes of waste storage as well (See 49 CFR 171 through 179). Some of these DOT requirements are already incorporated in the hazardous waste packaging requirements (§ 262.30) for generators who will ship wastes offsite. Before applying the DOT requirements for containers to permitted storage facilities, however, EPA wishes to examine more closely the appropriateness of the various DOT requirements for containers which will not be transported.

EPA invites comments on the suitability of the current standard, on the concept of replacing it with appropriate DOT requirements, on the applicability of the various DOT requirements, and on any other suggestions for improving this requirement.

3. *Containment* (§ 264.175). As discussed in the "General Issues" of this Preamble (Section III B), the regulations for storage facilities, of which container storage areas are one type, require a primary containment device, an inspection program where practical to detect leaks and deterioration, and where primary containment devices are easily damaged or difficult to inspect, a secondary containment system. In container storage, the container itself provides primary containment, i.e., it holds the waste, preventing escape. In this regard it serves the same purpose as a tank, the liner to a surface impoundment, and the concrete pad or other device underlying a pile. Secondly, it is practical to inspect container storage areas to detect leaks, excessive corrosion, or damage to containers so that wastes can be recontainerized before the damaged container fails, or, failing that, the escaped wastes can be cleaned up before they disperse widely into the environment.

In comparison to a tank, however, it is relatively easy to damage drums and most other kinds of containers. Containers are relatively thin-walled, can be punctured by fork lift trucks, and are prone to break open when dropped or knocked over. They tend to corrode or otherwise deteriorate relatively rapidly both from the inside as a result of reaction with the waste, and from the outside as a result of exposure to the environment. The Agency believes therefore, that it is prudent to require a secondary containment system under container storage areas. The containment system will catch leaks, spills, container failures, and precipitation which becomes contaminated, and hold it while its hazardousness can be determined.

Specifically, the containment system must have a base underlying the containers which is sufficiently impervious and continuous to hold spilled or leaked wastes or accumulated rainfall until it can be removed. Typically, the Agency believes this base will be constructed of concrete or asphalt but latitude has been incoporated to allow for other materials of construction. The important consideration is that the containment system in its entirety be capable of collecting and holding escaped wastes and contaminated precipitation.

EPA believes it unwise to allow drums or other containers to stand in accumulated rainfall, or leaked or spilled wastes. This leads to accelerated deterioration of the containers and interferes with inspections. The containment regulations therefore require that the base be sloped or otherwise designed to drain to a

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SWH-FRL-1942-76]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Requirements

AGENCY: Environmental Protection Agency.

ACTION: Revised interim final rules.

SUMMARY: These regulations revise interim final regulations that were promulgated on January 12, 1981 (46 FR 2851-66, 2877-88). Under the January 12, 1981, regulations owners or operators of hazardous waste management facilities had to estimate the costs of closure and post-closure care of such facilities and had to assure financial responsibility for those costs through any of three mechanisms:

—A trust fund
—A letter of credit, or
—A surety bond.

State guarantees or State-required mechanisms that are equivalent to the mechanisms specified in the regulations could also be used to satisfy the requirements. Today's regulations provide two additional options that can be used by owners or operators to demonstrate financial responsibility:

—A financial test which demonstrates the financial strength of the company owning the facility (or a parent company guaranteeing financial assurance for subsidiaries), or
—An insurance policy that will provide funds for closure or post-closure care.

In addition, specifications for the mechanisms included in the January 12, 1981, regulations have been modified, and minor clarifications have been made to the rules for estimating the costs of closure and post-closure care.

These amendments thus deal only with closure and post-closure financial assurance requirements. Third-party liability insurance requirements were also included in the January 12, 1981, promulgation. They will be the subject of a separate Federal Register notice to be published shortly.

DATES: Effective Dates: July 6, 1982 for standards for financial assurance of closure and post-closure care (40 CFR 264.142-151 except 264.147, and 265.142-151 except 265.147); November 19, 1980, for the cost-estimating standards for interim status facilities (40 CFR 265.142 and 265.144), and July 13, 1981, for cost estimating standards for general status (40 CFR 264.142 and 264.144). The liability requirements (§§ 264.147 and 265.147) currently have an effective date of April 13, 1982.

Comment Date: EPA will accept public comments on the revised regulations until June 7, 1982.

ADDRESSES: Comments should be sent to Docket Clerk (Docket No. 3004), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Docket: The public docket for these regulations is located in Room S269-C, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., which is open to the Public from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Among other things, the docket contains background documents which explain, in more detail than the preamble to this regulation, the basis for the provisions in this regulation.

Submissions and Correspondence to the Regional Administrator: All documents and correspondence to be submitted to the Regional Administrator regarding these financial requirments should be marked "Attention: RCRA Financial Requirements" as part of the address.

Copies of Regulations: Single copies of these regulations will be available while the supply lasts from RCRA Hotline, (800) 424-9346 (toll-free) or (202) 382-3000.

FOR FURTHER INFORMATION CONTACT: For general information call the RCRA Hotline or write to Emily Sano, Desk Officer, Economic and Policy Analysis Branch, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

For information on implementation of these regulations, contact the EPA regional offices below:

Region I

Gary Gosbee, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-1591

Region II

Helen S. Beggun, Chief, Grants Administration Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-9860

Region III

Anthony Donatoni, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-7937

Region IV

Dan Thoman, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308, (404) 881-3067

Region V

Thomas B. Golz, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-4023

Region VI

Henry Onsgard, Attention: RCRA Financial Requirements, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 767-3274

Region VII

Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307

Region VIII

Carol Lee, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-6258

Region IX

Richard Procunier, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 974-8165

Region X

Kenneth D. Feigner, Chief, Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101, (206) 442-1260

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are issued under the authority of Sections 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 USC 6905, 6912(a), and 6924.

II. Background

Section 3004(6) of RCRA requires EPA to establish financial responsibility standards for owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment. EPA has concluded that, at a minimum, financial responsibility standards are necessary and desirable to assure that funds will be available for proper closure of facilities that treat, store, or dispose of hazardous waste and for post-closure care of hazardous waste disposal facilities. The financial responsibility standards promulgated January 12, 1981, included requirements for such assurance and also for liability insurance coverage. The amendments

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 3, 1998

OFFICE OF THE
GENERAL COUNSEL

Contine file only

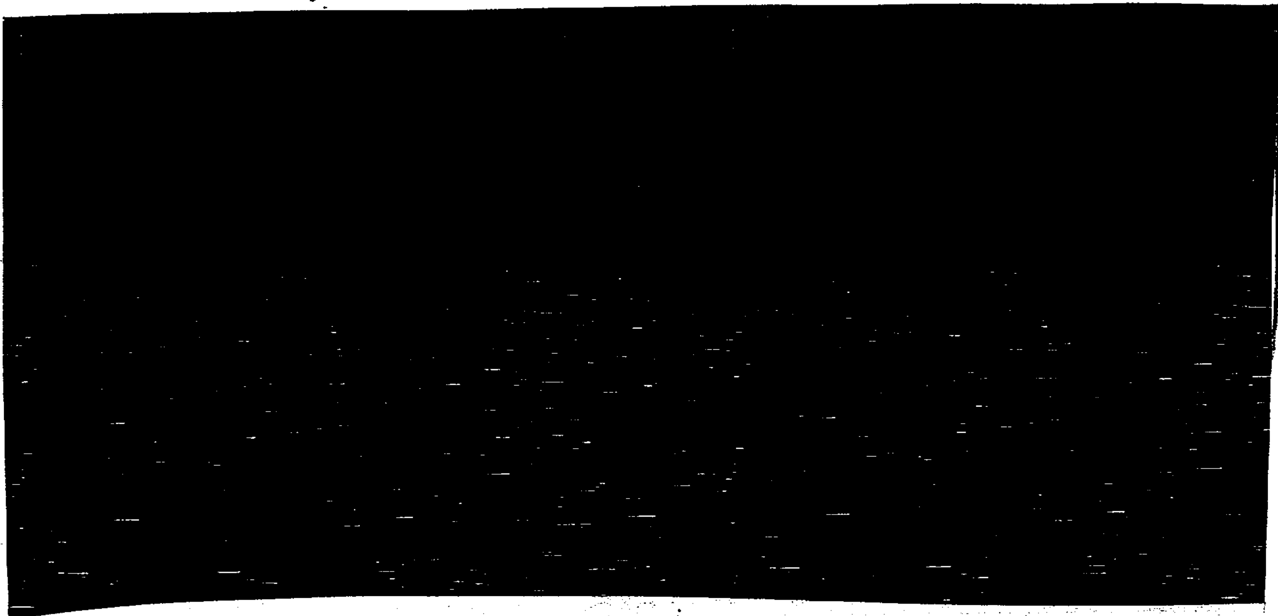
40-3453

MEMORANDUM TO: Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management, NMSS

FROM: Stuart A. Treby
Assistant General Counsel for
Rulemaking and Fuel cycle

SUBJECT: ANNUAL SURETY REVIEW FOR ATLAS CORPORATION

In your Memorandum of January 9, 1998, you requested our assistance in responding to a letter from Atlas dated December 18, 1997. In its letter, Atlas raised three main concerns regarding the staff's previous letter of December 2, 1997, in which the staff requested Atlas to upgrade its reclamation surety under Criterion 9 of Appendix A to 10 CFR Part 40, to cover the anticipated costs of the reclamation proposal currently under staff review. The staff's request was consistent with the previously issued Generic Letter, 97-03 of July 9, 1997.



Ex 5 w/H

CONTACT: Robert L. Fonner
(301) 415-1643

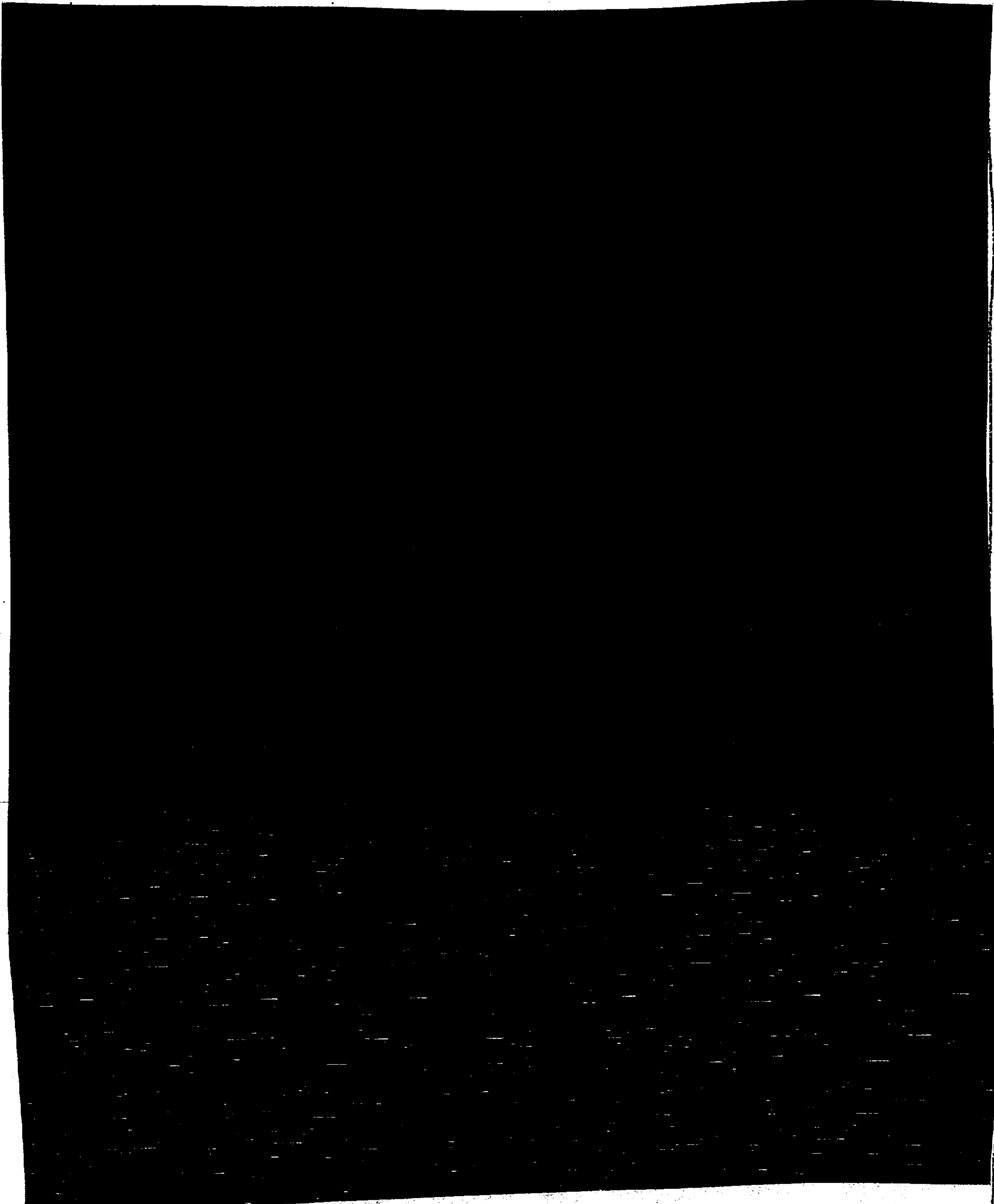
9803110384 980303
NMSS ADOCK 04003453
CF

NLXQ'/0

ATTORNEY- CLIENT PRIVILEGED COMMUNICATION
NOT FOR PUBLIC DISCLOSURE

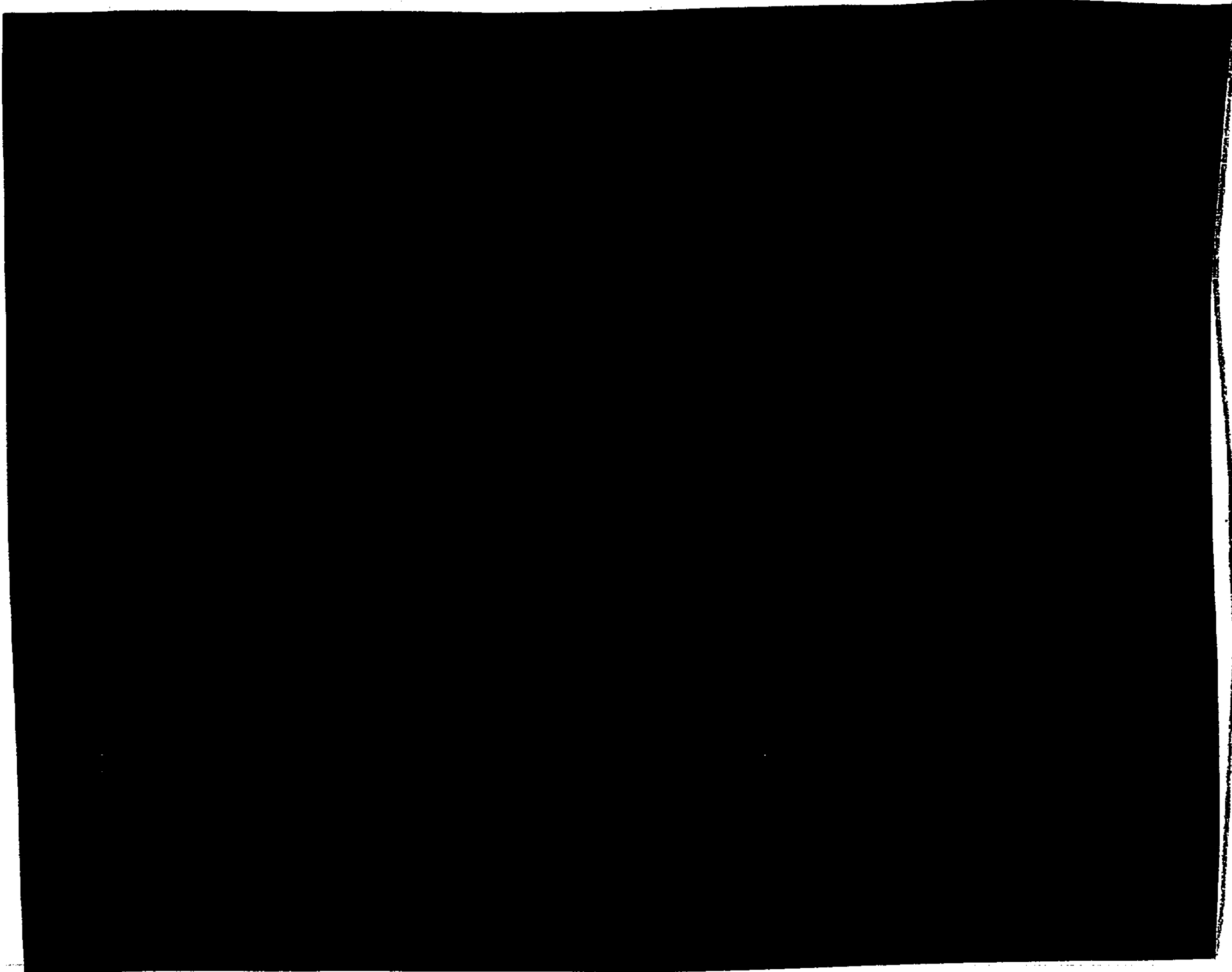
1/2

NRC FILE CENTER COPY



EA 5
W/H

ATTORNEY- CLIENT PRIVILEGED COMMUNICATION
NOT FOR PUBLIC DISCLOSURE



E4 5
W/H

Further questions on surety arrangements should be directed to Stephen H. Lewis, at 415-1684.

ATTORNEY- CLIENT PRIVILEGED COMMUNICATION
NOT FOR PUBLIC DISCLOSURE