Business Perspectives on Financial Assurance

Sue Briggum
Waste Management
RCRA Corrective Action Project and Superfund Settlements Project Perspectives

• For fiscal stability and an even playing-field, enforcement of FA requirements is crucial.
• FA options should be multiple and efficient – don’t assure more or less than reasonably predicted. Remember, FA is a back-up, not a draw-down, and rarely used.
• U.S. EPA’s development of FA options was methodical and has a demonstrated track record of success.
RCAP and SSP Perspectives

The recent financial crisis evidences the viability of the RCRA FA mechanisms –
• GM was required to replace the financial test beginning in 2005 – 4 years before its 2009 bankruptcy
• RCRA and Superfund holders of FA instruments have retained their ratings while those of the FA assurers (banks, insurers) saw their ratings fall
More liquid forms of FA are expensive – shifting assets from plant expansions (jobs), modernization (cleaner operations) and applied research (better products) to financial institution’s profits

- Estimated annual cost of a letter of credit (the least expensive form of liquid FA) 3% of the amount guaranteed.
- The total cost of liquid FA for RCRA CA/Superfund NPL sites estimated to exceed $1 Billion/year.

Rigid demands on FA delay settlements
EPA’s Recent Review of its Financial Assurance Program

Charge to its Environmental Financial Advisory Board (EFAB) to review –

• Financial test
• Commercial and captive insurance
• Cost estimation
• Financial assurance under SDWA for carbon sequestration wells
## EFAB Perspectives

<table>
<thead>
<tr>
<th>Chair</th>
<th>Bradley Abelow</th>
<th>MF Global (broker)</th>
</tr>
</thead>
</table>
| **State & Local** | Greg Mason  
Karen Massey  
Sharon Peay  
Andrew Sawyers  
Doug Scott  
Steve Thompson  
Justin Wilson | GA  
MO  
CT  
MD  
IL  
OK  
TN |
| **Business & Industry** | Bill Cobb  
Don Correll  
Scott Haskins  
Lindene Patton  
Cherie Rice  
Leanne Tobias  
Chiara Trabucci | Freeport-McMoRan  
American Water  
CH2M Hill  
Zurich Financial  
Waste Management  
Malachite (architectural firm)  
Industrial Economics |
### EFAB Perspectives

<table>
<thead>
<tr>
<th>Banking, Finance &amp; Legal</th>
<th>U Michigan Assured Guaranty Group The BondFactor Company Seattle-NW Securities Holland &amp; Knight Merrill Lynch Bank of America NYC Water Board Wells Fargo Piper Jaffray</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rachel Deming</td>
<td>Jim Gebhardt</td>
</tr>
<tr>
<td>Mary Francoeur</td>
<td>Ann Grodknik</td>
</tr>
<tr>
<td>Jennifer Hernandez</td>
<td>Keith Hinds</td>
</tr>
<tr>
<td>Jennifer Hernandez</td>
<td>Thomas Liu</td>
</tr>
<tr>
<td>Mathilde McLean</td>
<td>Jay Spector</td>
</tr>
<tr>
<td>Greg Swartz</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Scott Anderson</td>
</tr>
<tr>
<td>NGOs</td>
<td>John Boland</td>
</tr>
<tr>
<td></td>
<td>Eric Draper</td>
</tr>
<tr>
<td></td>
<td>Phillip Johnson</td>
</tr>
<tr>
<td></td>
<td>Deborah Livesay</td>
</tr>
<tr>
<td></td>
<td>EDF</td>
</tr>
<tr>
<td></td>
<td>Johns Hopkins</td>
</tr>
<tr>
<td></td>
<td>Audubon</td>
</tr>
<tr>
<td></td>
<td>Green Terra Energy Corp.</td>
</tr>
<tr>
<td></td>
<td>Torres Martinez Desert Cahuilla Indian Tribe</td>
</tr>
</tbody>
</table>
Financial Test: 2006 Report

• Many regulated parties use the financial test. In response to EPA’s request on how it could be improved, EFAP recommends adding a credit rating evaluation.

• Use of Standard & Poor’s and Moody’s ratings will provide regulators with independent verification of financial stability.

• Companies with investment grade credit (at least S&P BBB or Moody’s Baa) satisfy the stability requirement.
Financial Test

- Ratings should be reviewed at least every 2 years
- Companies not already rated can acquire ratings to satisfy the test – the cost of obtaining this review is less than purchasing 3rd party instruments
Captive Insurance: 2007 Report

• An independent credit analysis should be used to demonstrate the financial strength of a captive insurer
• Captive users should have a “secure” AM Best rating, or the insured should satisfy the financial test (and unconditionally guarantee the captive or possess investment grade credit)
• The state licensing the captive should have a system with procedures like Vermont’s
Commercial Insurance: 2010 Report

• Given the economic uncertainty of the times, use of a nationally recognized rating organization like AM Best is particularly important.

• A minimum rating should be set after EFAB evaluates letters of credit and surety bonds.

• Standardized language is not recommended.
Carbon Sequestration: 2010 Report

• Despite changes in market conditions, EFAB continues to recommend use of the financial test and 3rd party options like insurance (and EPA did adopt a financial test in its 12/10/10 rule on carbon sequestration wells)

• Recognize there are other governmental bodies regulating these markets and instruments

• Avoid imposing duplicative or excessive upfront financial assurance
Cost Estimation: 2010 Report

- EFAB partnered with ASTSWMO in making recommendations
- EPA should create standard checklist templates for cost estimate review in order to clarify definitions, ensure completeness and streamline review
- EPA should create a web-based platform to share knowledge on best practices
Cost Estimation

• EPA HQ should participate in ASTSWMO meetings and Regional/state monthly calls to share best practices and flag problems

• EPA should engage private sector RCRA and Superfund project owners on best practices and available cost data

• EPA should provide best practice training
Cost Estimation

• Reviews of cost estimates should occur no less often than every 5 years – more frequent with higher risk projects

• Cost-estimation should incentivize good behavior, e.g., by narrowing contingency factors for facilities with good compliance, superior EMSs, ISO 14001 certification, etc.