



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 7 1999

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. James J. Brossman
Amoco Corporation
Environmental Health and Safety
28100 Torch Parkway, Suite 500
Warrenville, Illinois 60555-4015

Dear Mr. Brossman:

This is in response to your December 14, 1998 letter to Ms. Nina Rivera in the Environmental Protection Agency's (EPA's) Office of General Counsel concerning the requirements for using the corporate guarantee for closure and post-closure care at RCRA regulated facilities. Your letter notes that a potential result of a planned merger between Amoco Corporation and British Petroleum would be that the new guaranteeing entity for RCRA closure and post-closure care, BP Amoco p.l.c., will be incorporated outside the United States. Your letter notes that the Texas Natural Resources Conservation Commission (TNRCC) has questioned whether foreign corporations could act as corporate guarantors based upon the language in 40 CFR 264.151(h)(1). The language reads, in part:

"Guarantee made this [date] by [name of guarantee entity], a business corporation organized under the laws of [insert name of State], herein referred to as guarantor."

This letter provides our interpretation of whether a foreign corporation may provide a guarantee under this provision.

Section 264.143(f)(10) allows an owner or operator to demonstrate financial assurance for closure through another firm's guarantee. Section 264.143(f)(10) specifies the acceptable relationships between the guarantor and the owner and operator, and requires the guarantor to meet the requirements for owners and operators in (f)(1) to (f)(8), to comply with the terms of the guarantee, and to use the wording for the guarantee as specified in §264.151(h)(1). Similar financial assurance provisions appear in §§ 264.145(f)(11) (post-closure care of permitted facilities), 265.143(e)(10) (closure care of interim status facilities) and 265.145(e)(11) (post-closure care of interim status facilities). The language in §264.151(h)(1), which provides wording for financial responsibility instruments, was not intended to restrict guarantors to entities incorporated in the United States so long as guarantors meet the other requirements set out elsewhere in the regulations.

Sections 264.143(f)(1)(i)(D) and 264.143(f)(1)(ii)(D) require a company using the financial test to have assets located in the United States amounting to at least 90 percent of total assets, or at

least six times the costs being assured through the financial test. This requirement is intended to ensure for both United States and foreign based companies that in the unlikely event of bankruptcy of the guarantor, sufficient assets will be available for closure costs. Therefore, there is no need to preclude a foreign company from extending a corporate guarantee, and EPA interprets its regulations as allowing a foreign company to act as a corporate guarantor if it otherwise meets the requirements.

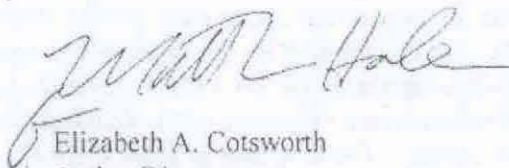
EPA notes that the language in §264.151(h)(1) differs from the language in §264.151(h)(2) which provides the wording by a company guaranteeing liability under §264.147(g). The language in §264.151(h)(2) clearly shows that a foreign based corporation can provide a corporate guarantee for the liabilities of a RCRA facility.

"Guarantee made this [date] by [name of guarantee entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of _____" and insert name of State; if incorporated outside the United States insert name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor."

The preamble to the final rule extending the corporate guarantee for closure and post-closure care to non-parent corporations (57 Federal Register 42832 at 42833, September 16, 1992) notes, "This rule revises §§ 264.143, 264.145, 265.143, and 265.145 to allow the same non-parent guarantee for closure and post-closure as is currently allowed for third-party liability." The preamble made no distinctions between the type of corporations that can act as corporate guarantors for closure/post closure cost and those that can act as corporate guarantors for liability. This is consistent with our interpretation that §264.151(h)(1) can be used by foreign firms seeking to provide a guarantee, provided that they meet all the other requirements.

This letter represents our interpretation of EPA's regulatory requirements. Since many states agencies such as TNRCC are authorized to operate the hazardous waste program, you should check with the appropriate state official(s) as their requirements are sometimes more stringent than EPA's. If you have further questions about the federal requirements, please contact either Dale Ruhter at (703) 308-8192 or Nina Rivera at (202) 260-1598.

Sincerely,



Elizabeth A. Cotsworth
Acting Director
Office of Solid Waste

cc: ✓ Ms. Linda Shirk, TNRCC
✓ Mr. Stephen Gilrein, Region VI



Amoco Corporation

Environment, Health and Safety

28100 Torrey Parkway, Suite 500
Warrenville, Illinois 60555-4015
Regulatory Services Division
Facsimile: 630-836-5686

December 14, 1998

Ms. Nina Rivera
Office of General Counsel
United States Environmental Protection Agency
401 M. Street, SW
Washington, D.C. 20460

RE: RCRA Corporate Guarantee for Closure or Post-Closure Care

Ms. Rivera:

The purpose of this letter is to follow-up on our December 10, 1998 conversation concerning the requirements for using the corporate guarantee for closure or post-closure care at RCRA regulated facilities. As we discussed, Amoco Corporation and British Petroleum are planning to merge their businesses pending receipt of government approvals. Subsequent to our conversation we have learned the merger is expected to occur on or about December 22, 1998. One result of this merger may be that the new guaranteeing entity for RCRA closure and post-closure care, BP Amoco p.l.c., will be incorporated outside the United States.

The Texas Natural Resources Conservation Commission (TNRCC) has questioned whether foreign corporations may use the corporate guarantee for closure or post closure care based on the language of 40 CFR 264.151(h)(1). The language reads:

"Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [insert name of State], herein referred to as guarantor."

The TNRCC has interpreted this language to mean that foreign corporations may not use the corporate guarantee for closure or post-closure care; however, they indicated a willingness to consider U.S. EPA's interpretation of this requirement. During our discussion you indicated that you did not believe it was the Agency's intent to prohibit foreign corporations from acting as the guaranteeing entity and you would research the regulations and consult with EPA's Office of Solid Waste for confirmation.

Ms. Nina Rivera
December 14, 1998
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We are trying to resolve this issue by the merger date so your prompt attention to this matter is appreciated. Please send your response to my attention at Amoco Corporation, Suite 500, 28100 Torch Parkway, Warrenville, IL 60555-4015. My fax number is (630) 836-5686.

Please contact me at (630) 836-5663 if you have any questions or require additional information.

Sincerely,



James J. Brossman

cc: Kristine Dutton, Amoco
Rob Norris, TNRC