



Linda S. Adams  
Secretary for  
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## Department of Toxic Substances Control

Maziar Movassaghi  
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August 31, 2010

### INTERIM GUIDANCE ON THE USE OF AN AGREED UPON PROCEDURES WITH A FINANCIAL TEST OR CORPORATE GUARANTEE

The financial assurance regulations [California Code of Regulations, title 22, §§ 66264.143(f)(3)(C), 66264.145(f)(3)(C), 66264.147(f)(3)(C), 66265.143(e)(3)(C), 66265.145(e)(3)(C), and 66265.147(e)(3)(C)] require the submittal of a special report from the owner or operator's independent certified public accountant (CPA) with the use of the financial test and corporate guarantee. The special report must include a statement that no matters came to the CPA's attention that caused the CPA to believe that the data should be adjusted. This statement is commonly called a "negative assurance." However, the use of a negative assurance for this purpose conflicts with current accounting practice.

Beginning in 2005, the Department of Toxic Substances Control (DTSC) began citing financial tests submitted without a negative assurance letter. Corporations that were otherwise qualified to use a financial test or corporate guarantee were allowed to continue to use the financial test or corporate guarantee pending a resolution to this issue.

Consistent with current accounting practice, DTSC has decided to allow the use of an "agreed upon procedures" letter in lieu of a special report containing a negative assurance. Facilities previously cited for failure to include a special report with a negative assurance but otherwise qualified to use the financial test or corporate guarantee will be considered to be in compliance as of April 13, 2010.

Enclosed are copies of the United States Environmental Protection Agency issue memorandum regarding the use of an agreed upon procedures and the DTSC interim guidance. If you have questions or need additional information, please contact the Financial Responsibility Section at the letterhead address or via e-mail at [FR@dtsc.ca.gov](mailto:FR@dtsc.ca.gov)

Sincerely,

Original signed by Keith Kihara

Keith Kihara  
Supervising Hazardous Substances Scientist I  
Enforcement and Emergency Response Program

Enclosures

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

FEB 27, 1997

**Memorandum**

**Subject:** Obsolete Language in the Financial Test for Subtitle C Treatment Storage and Disposal Facilities

**From:** Elizabeth A. Cotsworth, Acting Director  
Office of Solid Waste

**To:** Senior RCRA Policy Advisors  
RCRA Enforcement Managers

This memorandum provides guidance to Regions and States on an acceptable form for the independent certified public accountant's (CPA's) special report that owners or operators must submit when using the financial test and corporate guarantee to comply with EPA's financial assurance regulations. This guidance is necessary because the regulatory requirement (that the CPA's report provide "negative assurance") has become inconsistent with current professional auditing standards.

Background on the Regulations

Subpart H of 40 CFR parts 264 and 265 allows owners and operators of RCRA treatment, storage, and disposal facilities to use a financial test or a corporate guarantee to demonstrate financial assurance. In using the financial test or corporate guarantee, the owner or operator's chief financial officer (CFO) must submit (1) a letter using the language specified in 40 CFR 264.151 to report financial information and test results, (2) a copy of the firm's audited year end financial statement, and (3) a copy of a special report from a CPA. The CPA's special report presents the procedures performed and findings based on the CPA's comparison of the data which the chief financial officer's letter specifies as coming from the independently audited year end financial report with the amounts in the audited financial statements. The regulations also require the CPA's report to state that "In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted" (see, for example, 40 CFR part 264.143(f)(3)(iii)(B)). This is referred to by the auditing profession as a "negative assurance."

The CFO's letter must discuss any adjustments made in the data to report the results of the financial test that differ from the amounts in the audited financial statements. The purpose of the CPA's special report on the CFO's letter is to ensure that information provided in the financial test

is consistent with information in the firm's audited financial statements. This is particularly important when information cannot be checked directly against the financial report because of adjustments by the chief financial officer. An allowable adjustment by the chief financial officer for the Subtitle C financial test was discussed in the preamble to the proposed corporate financial test for municipal solid waste landfills (59 FR 51530, October 12, 1994). The preamble states that in reporting for "post-retirement benefits other than pensions" (e.g. health benefits for a company's retirees), the Financial Accounting Standards Board Statement 106 allows either an immediate or deferred recognition of these benefits as liabilities. Since either method is allowable under generally accepted accounting principles for financial reports, EPA will allow companies to use the immediate recognition method for their financial reporting to the Securities and Exchange Commission and the delayed method for purposes of the financial test.

#### New Professional Standards for CPAs Do Not Permit Expressions of Negative Assurance

In performing audits and other types of work, CPAs must follow certain professional standards. The American Institute of Certified Public Accountants, Inc.'s (AICPA's) Statement on Auditing Standards no longer permits independent auditors to express negative assurance (i.e. "no matter came to his attention which caused him to believe that the specified data should be adjusted."). The new standards require the auditor to present the results of procedures performed in the form of findings, and explicitly disallow issuing "negative assurance." This has left many accountants, corporations and States uncertain how to fulfill the regulatory requirement for using the financial test.

#### Use of a Report from an "Agreed Upon Procedure"

The Agency intends to change the regulations so that they conform to the new professional auditing standards. Until that rulemaking is completed, in addition to, or in lieu of, a CPA report stating that "no matter came to his attention," EPA will accept a CPA's report describing the procedures performed and related findings, including whether or not there were discrepancies found in the comparison, based on an agreed-upon procedures engagement performed in accordance with AICPA's Statement on Auditing Standards No.75, Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts or Items of a Financial Statement. (In an agreed-upon procedures engagement an accountant is engaged by a client to issue a report of findings based on specific procedures performed on the specific items of a financial statement.) The Agency will regard this report as satisfying the requirements of the financial test or corporate guarantee for a special report by an independent CPA on the CFO's letter.

Please distribute a copy of this memo to your authorized states. Also, if you or your authorized States have any questions on this issue, please feel free to contact Dale Ruhter at (703) 308-8192.

cc: Steven Herman, OECA  
Tom Kennedy, ASTSWMO



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## Department of Toxic Substances Control

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8800 Cal Center Drive  
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Arnold Schwarzenegger  
Governor

### MEMORANDUM

FROM: Maziar Movassaghi   
Acting Director  
Department of Toxic Substances Control

TO: Executive Staff  
Department of Toxic Substances Control

DATE: April 13, 2010

SUBJECT: Interim Guidance RE: Use of the Financial Test

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The purpose of this document is to provide interim guidance to Department of Toxic Substances (Department) staff and to the regulated community on an acceptable form for the independent certified public accountant's (CPA's) special report that owners or operators must submit when using the financial test and corporate guarantee to comply with the financial assurance regulations of the Department of Toxic Substances Control. This guidance is necessary because the regulatory requirement (that the CPA's report provide "negative assurance") has become inconsistent with current professional auditing standards.

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Title 22 of the California Code of Regulations (CCR), parts 66264 and 66265, allows qualified owners and operators of RCRA treatment, storage, and disposal facilities to use a financial test or a corporate guarantee to demonstrate financial assurance. In using the financial test or corporate guarantee, the owner or operator's chief financial officer (CFO) must submit (1) a letter using the language specified in 22 CCR 66264.151 to report financial information and test results, (2) a copy of the firm's audited year end financial statement, and (3) a copy of a special report from a CPA. The CPA's special report presents the procedures performed and findings based on the CPA's comparison of the data which the chief financial officer's letter specifies as coming from the independently audited year end financial report with the amounts in the audited financial statements.

The regulations also require the CPA's report to state that "In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted" (see, for example, 22 CCR part 66264.143(f)(3)(C)). This is referred to by the auditing profession as a "negative assurance."

CPAs must follow certain professional standards. The American Institute of Certified Public Accountants (AICPA's) Statement on Auditing Standards does not permit independent auditors to express negative assurance. The standards require the auditor to present the results of procedures performed in the form of findings, and explicitly disallow issuing "negative assurance." This has left many accountants and corporations uncertain how to fulfill the regulatory requirement for using the financial test.

The Department intends to change the regulations so that they conform to professional auditing standards. Until that rulemaking is completed, in addition to, or in lieu of, a CPA report stating that "no matters came to his attention," the Department will accept the following as satisfying the requirements of the financial test or corporate guarantee for a special report by an independent CPA on the CFO's letter:

A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

1. the independent certified public accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statement; and,
2. identifying the specific accounting or auditing standards and guidance relied upon to prepare the report.

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