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The Surety & Fidelity Association of America

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INDEPENDENT REGULATORY
REVIEW COMMISSION

September 11, 2007

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SEP 12 2007

The Honorable Kathleen A. McGinty
Chair, Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101-2301

ENVIRONMENTAL QUALITY BOARD

Re: Proposed Rulemaking: Hazardous Waste Regulations; 37 Pa.B.3249

Dear Ms. McGinty:

The Surety & Fidelity Association of America (SFAA) is a trade association of companies licensed to write fidelity and surety insurance in the United States. The approximately 500 member companies of SFAA are sureties on the vast majority of the bonds written in the United States and in Pennsylvania. We appreciate the opportunity to comment on the above referenced proposed changes to the Hazardous Waste Regulations.

SFAA supports the deletion of corporate guaranties as an acceptable form of security. A surety bond is a guaranty from a regulated insurer independent of the bond principal. If the bond principal fails, the surety company will perform its obligations under the bond. The surety company also evaluates the principal before writing the bond, and the surety's prequalification of the principal is one of the reasons bonds are required.

If an operator of a hazardous waste treatment facility were to become insolvent, however, it is likely that its corporate parent or affiliate would also be insolvent, and the corporate guaranty would not provide the intended security. In addition, a guaranty from a corporate affiliate does not entail any prequalification. There is no independent evaluation of the likelihood that the operator will be able to perform its obligations. The adverse experience in Pennsylvania with such corporate guaranties is logical and foreseeable. SFAA supports the proposed amendments to Chapters 264a and 265a to delete the option of providing corporate guaranties.

The proposed amendments to the bond forfeiture provisions are a positive step, but they do not go as far as they should. The amended rules would require use of any forfeiture first to pay for costs at the facility for which the bond was provided. We believe that the obligation of each bond should be solely for the facility on which it is provided. The surety should have to pay only the cost of closing that facility, not a forfeiture of the penal sum to the Abatement Fund. SFAA supports setting the amount of each bond at the anticipated cost of closing the facility on

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which it is provided and limiting any forfeiture to the amount needed for that facility. We believe such a bonding arrangement would help to make bonds available to responsible operators and help to exclude irresponsible ones before they can cause an environmental problem.

We appreciate the opportunity to submit these Comments and would be glad to discuss these proposals or to provide any other information that might be useful to the Board.

Sincerely yours,



Edward G. Gallagher
General Counsel