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INDEPENDENT REGULATORY
REVIEW COMMISSION

Honorable Kathleen McGinty
Chairperson
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

**RE. Proposed Hazardous Waste Regulations
Published July 14, 2007**

Dear Chairperson McGinty:

Rohm and Haas Company has reviewed the proposed changes to the Hazardous Waste Regulations proposed on July 14, 2007 and wishes to comment on the financial assurance proposed changes. Rohm and Haas Company also supports the comments submitted by the Pennsylvania Chemical Industry Council (PCIC).

The Elimination of Subchapter H. Financial Requirements. Rohm and Haas has discussed with several members of the Department over several years the difference between what the Department utilizes for financial assurance and what other states are using and what the EPA requires. Rohm and Haas has even provided to the department upon several occasions examples of what other states and the federal program use for financial assurance, specifically the financial test and corporate guarantee. Because of these differences, there has been concern that the Commonwealth could find itself in the present situation of proposing to remove one of the more secure options available, the financial test, from the regulated community's available instruments. The ability to provide a financial test for closure and post-closure is used safely in other states as well as on the national level.

Rohm and Haas is ready to assist the Department in crafting a regulation that will meet the needs of the Department, but which also will reflect the appropriate financial instruments currently available to the regulated community on the federal level as well as in many other states, will provide federal consistency, and which will provide for necessary operational flexibility.

Sincerely yours,

W. Vincent Lord, Jr.
Distinguished Scientist

Enclosure

**ROHM AND HAAS COMPANY
COMMENTS ON
DEPARTMENT OF ENVIRONMENTAL PROTECTION
PROPOSED HAZARDOUS WASTE REGULATIONS**

Submitted
September 12, 2007

Rohm and Haas Company is pleased to submit these comments on the Pennsylvania Department of Environmental Protection's (PADEP) proposed amendments to Title 25, Chapters 264a and 265, Subchapter H - Financial Requirements.

Rohm and Haas' corporate offices, research facility and five of its production facilities are located in Pennsylvania. Rohm and Haas utilizes the financial test and corporate guarantee to demonstrate financial assurance to PADEP, US EPA and other regulatory agencies both within Pennsylvania and throughout the United States. The financial test and corporate guarantee allow Rohm and Haas to reinvest money which otherwise would be set aside in a dedicated fund or expended for coverage. For example, such savings can be used to defray costs of capital improvements such as Rohm and Haas' \$23,000,000 renovation of its corporate offices in Philadelphia. Such savings also allow companies like Rohm and Haas to remain competitive with concomitant economic benefits to the community in the form of jobs and tax revenue. At the same time, the financial test and corporate guarantee are effective financial assurance mechanisms.

The proposal to eliminate both the financial test and corporate guarantee in Pennsylvania and effectively require the use of insurance and other purchased coverage is not a solution. Many governmental agencies have examined the benefits of elimination of the financial test and corporate guarantee, including the Environmental Financial Advisory Board (EFAB), which the Environmental Protection Agency (EPA) commissioned to determine the effect of the financial test and corporate guarantee on the ability of state and federal governments to collect monies in the event of bankruptcy or other failures. In a January 11, 2006 letter to EPA, EFAB stated that insufficient data existed to conclude that the financial test is an inadequate method of financial assurance.. The EFAB recommended to EPA that the financial test and corporate guarantee be continued, especially the Alternative II test using the outside bond rating. (See USEPA EFAB Letter to Stephen Johnson, January 11, 2006 [<http://www.epa.gov/efinpage/>]).

In addition to the lack of evidence suggesting replacement of the financial test and corporate guaranty will provide greater financial protection, PADEP's proposal will have a negative impact upon Pennsylvania's economy and business competitiveness as a result of requiring companies to purchase financial assurance. Rohm and Haas has calculated that the additional costs for it to use the financial instruments allowed by PADEP's proposed revisions and to comply with the proposed regulations, could range from \$10,000 for a Letter of Credit (per facility) to over \$50,000 (per facility) for an insurance policy.

In addition to cost, there are practical problems should PADEP's proposal be implemented. A preliminary survey of certain insurance carriers indicate an unwillingness to underwrite this type of coverage. Additionally, the proposal does not account for the fact that insurance companies may become insolvent, as was the case with Reliance Insurance Company which provided financial assurance for many facilities. Moreover, our research indicates that banks may have limits on the amounts of Letters of Credit that are allowed outstanding. Additionally, Certificates of Deposit (CD) are not a viable option for closure/post-closure costs in excess of \$100,000 since each CD can only be federally insured up to \$100,000. Also, limitations exist with regard to how much any one individual can collect per banking institution. In our case we would have to obtain more than 30 different CDs from 30 different banking institutions to satisfy that requirement.

Over the past 15 years, Rohm and Haas has demonstrated through the financial test and corporate guarantees its ability to clean up over \$150,000,000 of RCRA and Superfund obligations, including the Lipari Landfill Superfund, NJ, site and Whitmoyer, PA,. Currently, Rohm and Haas has demonstrated its ability to assure over \$50,000,000 of remediation and closure costs using the financial and/or corporate guarantee..

As a waste generator shipping waste to many TSDFs in the US, Rohm and Haas has a vested interest in seeing that all TSDFs have the resources to properly close those units. As a Potentially Responsible Party at many Superfund sites, Rohm and Haas knows first hand that waste generators often pay disproportionate shares of clean up costs in cases of financial inability of owner/operators. Nevertheless, as the EFAB has noted, eliminating the financial test and corporate guarantee does not solve that problem.

Instead of eliminating the financial test, Pennsylvania can strengthen its financial assurance program by incorporating the federal requirement that all liabilities, not just costs of closure and post closure of facilities located within the Commonwealth, be recorded. Pennsylvania is the only state that requires those companies which use the financial test to only record the closure and post-closure costs associated with facilities operating in their state. For example, Rohm and Haas' total financial assurance for closure and post closure provided to all entities within the United States exceeded \$43,000,000 for closure and post closure, yet Pennsylvania regulations require it to demonstrate less than \$4,000,000 for closure, or roughly 10% of it's closure/post-closure obligations. Factoring in the multiplier of 6 times to these closure liabilities demonstrates the benefit of enhancing the financial test in lieu of its elimination. Under the above scenario, a company must have \$258,000,000 in tangible net worth to satisfy EPA and many state requirements, but only needs to have \$24,000,000 in tangible net worth to satisfy PA requirements.

Finally, elimination of the corporate guaranty does not reflect the practical realities of many corporate citizens. Many companies, including Rohm and Haas, have wholly owned subsidiaries for financial reporting, tax or other purposes which do not generate significant revenues. For those entities, the only source of providing financial assurance may be a guarantee by the corporate owner.

In closing, Rohm and Haas strongly urges the PADEP to reexamine the elimination of the corporate guarantee and financial test. Not only is there no cogent rationale for eliminating these two mechanisms, but to do so will negatively impact Pennsylvania business. Instead, Rohm and Haas encourages the adoption of regulations which will enhance the financial test and align it with federal requirements.

Rohm and Haas also joins in on those comments submitted by the Pennsylvania Chemical Industry Council.

If you have any further questions regarding Rohm and Haas' comments, please contact Vince Lord at 215-592-2495 or wlord@rohmmaas.com. Thank you in advance for your consideration of this issue.

Sincerely,

Vincent Lord
Distinguished Scientist
EHS&SD



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF LAND RECYCLING AND WASTE MANAGEMENT

**HAZARDOUS WASTE SITE CLOSURE
OR POST-CLOSURE CORPORATE GUARANTEE BOND**

- Initial Application
- Annual Renewal

Department of Environmental Protection
Bureau of Land Recycling and Waste Management
Division of Hazardous Waste Management
RCSOB - 14th Floor
P.O. Box 8471
Harrisburg, PA 17105-8471

Dear Sir or Madam:

I am the Chief Financial Officer of _____
(Applicant Name and Address)

Hereinafter referred to as "Applicant." This letter is in support of the use of the financial test to demonstrate financial responsibility for closure and/or post-closure care as specified in 25 Pa. Code Sections 265a.156(c). The Applicant identified previously is the owner or operator of the following facilities for which use of the corporate guarantee bond under 25 Pa. Code Section 265a.156(c) is being demonstrated.

NAME	ADDRESS	EPA I.D. NUMBER
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____

I hereby certify that the applicant in the last 36 calendar months preceding this application:

1. (HAS) HAS NOT defaulted on the payment of preferred stock dividends, sinking fund installments, installment on indebtedness for borrowed money or payment of rentals under long-term leases.

(If the statement is HAS) Explain:

2. HAS (HAS NOT) honored and complied with all its obligations under all applicable self-insurance programs authorized by the statutes of the Commonwealth.

(If the statement is HAS NOT) Explain and specify the reason(s):

3. HAS (HAS NOT) honored its obligations under all applicable self-insurance and corporate guarantee programs implemented by any other state or the Environmental Protection Agency.

(If the statement is HAS NOT) Explain and specify the reason(s):

4. HAS (HAS NOT) had commercial insurance cancelled for nonpayment of premiums or fraud or failure to maintain a reasonable risk management program required by a commercial insurance underwriter as a condition of maintaining or reviewing insurance coverage.

(If the statement is HAS) Explain. If for nonpayment of premiums, specify the reason(s) for nonpayment:

I certify the information that is contained in this letter and on any attachments to this letter is true and correct to the best of my knowledge and belief. Upon request by the Department, I agree to promptly provide an update of the information contained in this letter and any attachments hereto. I certify that I am legally authorized to sign, date and submit this information on behalf of the applicant.

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

COMMONWEALTH OR STATE
OF

COUNTY OF

:
:
:
:
: SS

On this, the _____ day of _____, _____, before me
personally appeared _____ who acknowledged
_____ self to be the _____ of _____
_____, a _____, and that
as such _____ being authorized to do so, executed the
foregoing instrument for the purposes therein contained by signing the name of the _____
_____ by _____ self as _____.

IN WITNESS WHEREOF, I hereunder set my hand and official seal

Notary Public

My Commission Expires:

ATTACHMENT 1

FINANCIAL TEST ALTERNATIVE 1

- Initial Application
 Annual Renewal

- | | | |
|--|----|--|
| 1. Amount of Annual Aggregate Closure and/or Post-Closure Bond to be Demonstrated: | \$ | |
| 2. Current Assets: | \$ | |
| 3. Current Liabilities: | \$ | |
| 4. Net Working Capital (Line 2 minus Line 3): | \$ | |
| 5. Tangible Net Worth: | \$ | |
| 6. Percent of Assets Located in the United States Assets: | \$ | |
| 7. Total United States Assets: | \$ | |

- | | YES | NO |
|--|--------------------------|--------------------------|
| 8. Is Line 5 at least \$10 million? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Is Line 4 at least 6 times (X) Line 1? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Is Line 5 at least 6 times (X) Line 1? | <input type="checkbox"/> | <input type="checkbox"/> |

(If less than 90% of assets are located in the United States - complete Line 11)

- | | | | |
|--|----|--------------------------|--------------------------|
| 11. Is Line 7 at least 6 times (X) Line 1? | \$ | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Owner or Operator is required to file Form 10K and Form 10Q with the Securities and Exchange Commission | | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Amounts contained in Lines 2, 3, 4, 5, 6, and 7 are derived from owner or operator independently audited, year-end financial statements for the latest completed fiscal year | | <input type="checkbox"/> | <input type="checkbox"/> |

14. Owner or Operator fiscal year ends on:

Month: _____ Day: _____ Year: _____

ATTACHMENT 2

FINANCIAL TEST ALTERNATIVE 2

Initial Application
 Annual Renewal

1. Amount of Annual Aggregate Closure and/or Post-Closure Bond to be Demonstrated: \$ _____
2. Current Bond Rating, most recent issue: \$ _____
 - (a) Name of Rating Service \$ _____
 - (b) Date of Bond Issuance \$ _____
 - (c) Date of Bond Maturity \$ _____
3. Tangible Net Worth: \$ _____
4. Percent of Assets Located in the United States \$ _____
5. Total United States Assets: \$ _____

- | | YES | NO |
|---|--------------------------|--------------------------|
| 6. Is Line 3 at least \$10 million? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Is Line 3 at least 6 times (X) Line 1? | <input type="checkbox"/> | <input type="checkbox"/> |

(If less than 90% of assets are located in the United States - complete Line 8)

- | | | |
|--|--------------------------|--------------------------|
| 8. Is Line 5 at least 6 times (X) Line 1? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Owner or Operator is required to file Form 10K and Form 10Q with the Securities and Exchange Commission | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Amounts contained in Lines 3, 4, and 5 are derived from owner or operator independently audited, year-end financial statements for the latest completed fiscal year..... | <input type="checkbox"/> | <input type="checkbox"/> |

11. Owner or Operator fiscal year ends on
- Month: _____ Day: _____ Year: _____