

RCRA and CERCLA FINANCIAL ASSURANCE

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OUTLINE

- 1. What is the purpose of Financial Assurance?

- 2. Who establishes Financial Assurance?
For whose benefit?

- 3. Overview of Financial Assurance and Risk to the Regulator

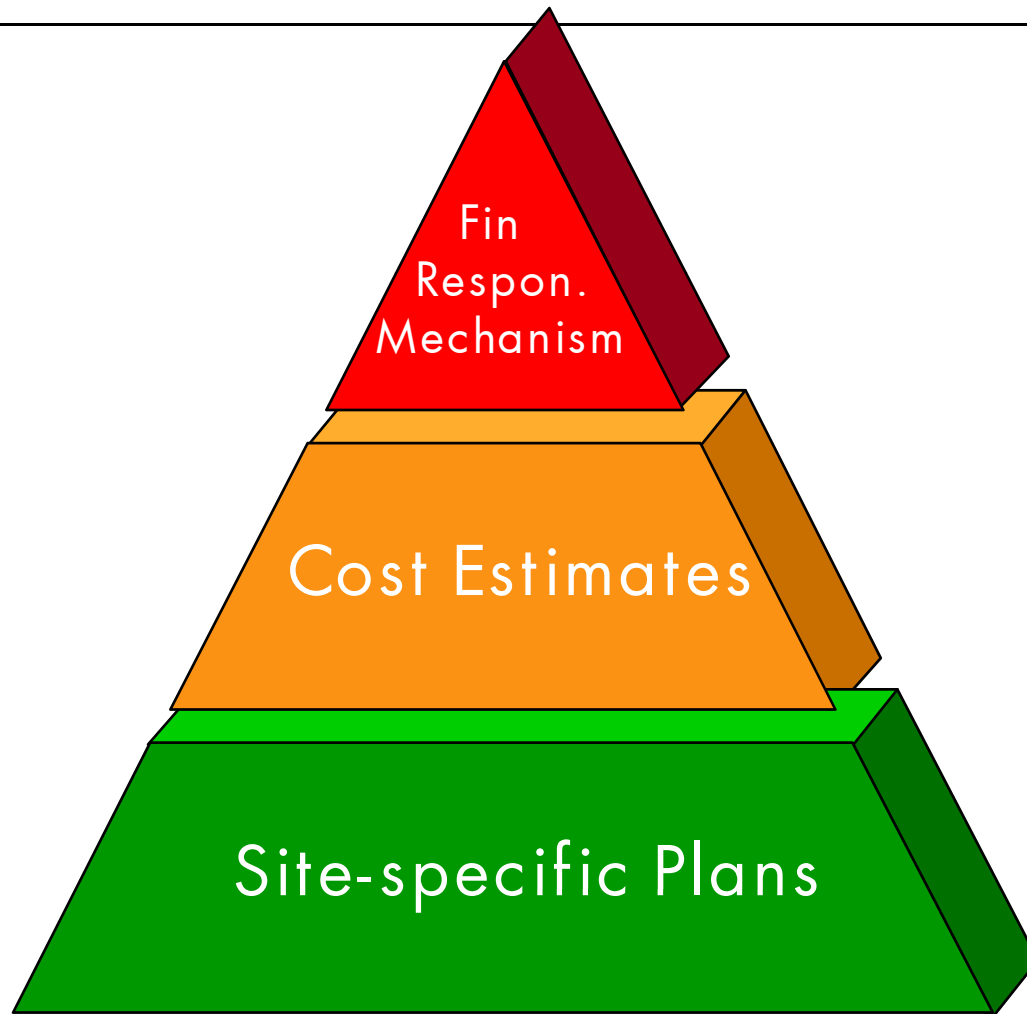


OUTLINE, cont.

- 4. Recommendations from a Practitioner

- 5. Questions

Where does Financial Assurance fit in?





1. What is Financial Assurance?

A requirement that owners demonstrate adequate financial ability to complete their Work obligations.

This requirement is imposed in a permit or an enforcement order.



2. Who establishes Financial Assurance?

- The regulated entity (owner / operator or Responsible Party) establishes Financial Assurance by setting aside funds to conduct cleanup, *in the event the operator cannot or will not do so on his own accord.*



2. For Whose Benefit?

- The regulator is named beneficiary on the financial assurance. No exceptions.

- The following parties are **not acceptable beneficiaries**:
 - Owner / operator or a trustee assigned by the owner
 - Legal counsel to owner / operator
 - Bank which issues financial assurance



3. OVERVIEW of FA and RISK to REGULATOR

□ A. Cash Mechanisms

1. Letter of Credit

Issued by a bank (third party).

Cost to operator: zero to 100% face value.

Degree of risk to regulator: **LOW**



3. OVERVIEW, cont.

2. Surety Bond

Issued by a surety company (third party).

Cost to the operator: depends on company risk

Degree of risk to the regulator: **LOW**



3. OVERVIEW, cont.

3. Trust Fund

Issued by a bank (third-party).

Cost to the operator: 100% cleanup cost

Degree of risk to the regulator: **LOW**



3. OVERVIEW, cont.

4. Insurance

Issued by an insurance company.

Cost to the operator: depends on company risk

Degree of risk to the regulator: **MEDIUM**



3. OVERVIEW, cont.

- Captive Insurance – What is this?
- A wholly-owned insurance company created by the owner to issue insurance policies on behalf of its parent.

Cost to the owner: zero?

Degree of risk to the regulator: **MEDIUM to HIGH**



3. OVERVIEW, cont.

□ B. Non-Cash Mechanisms

5. Financial Test

Issued by the owner or operator

Cost to the owner: little to nothing

Risk to regulator: **MEDIUM to HIGH**



3. OVERVIEW, cont.

6. Corporate Guarantee

Issued by the owner's parent or 'substantial business relationship'

Cost to owner: little to nothing

Risk to regulator: **MEDIUM to HIGH**



4. RECOMMENDATIONS

- 1. Determine the State's risk tolerance.
- 2. Ask: *How accessible are the operator funds if needed?*
- 3. Every FA mechanism requires maintenance by the regulator.



4. RECOMMENDATIONS, cont.

- Lower Risk and Easy to Monitor
- Letter of Credit (\$) accessible
- Trust Fund (\$) accessible
- Surety Bond (\$) accessible



4. RECOMMENDATIONS, cont.

- Higher Risk and Harder to Monitor
- Insurance (\$) accessible?
- Financial Test (no \$) accessible?
- Corporate Guarantee (no \$) accessible?



5. QUESTIONS?
