

Section 12: Financial Assurance

12.1 Introduction

Purpose of financial assurance

Proper financial planning early in the development of landfill facilities is required to ensure that adequate funding will be available to cover the cost of closure(s), post-closure care, and any corrective action activities.

Coverage

Maintain financial assurance to cover the costs of:

- closure of the landfill
 - post-closure monitoring and maintenance of the landfill facilities, and
 - any corrective action required by the Department
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Exemptions

Exempt landfills must satisfy the exemption criteria in OAR 340-94-140(2) and meet the waste acceptance and final cover deadlines below:

| Landfill type | that stopped receiving waste by... | and completed installation of final cover by... |
|---|---|--|
| any landfill | October 9, 1993 | October 9, 1994 |
| “small landfill” [40 CFR 258.1(e)(2)] | April 9, 1994 | October 9, 1994 |
| “very small landfill serving certain small communities” [40 CFR Part 258.1(f)(1)] | October 9, 1997 | October 9, 1998 |

How to respond Respond to applicable financial assurance requirements, as determined by the table below.

| If the facility is... | Then... |
|------------------------------|---|
| subject to Subtitle D | place a financial assurance plan in the facility operating record and submit to the Department a copy of the mechanism and certification that the plan meets requirements |
| seeking an exemption | demonstrate to the Department that the facility meets the exemption criteria |

Updating financial assurance

Review and update the cost estimates and the financial assurance annually during the operating life and post-closure care period, or until the corrective action is completed, as applicable. Place annual adjustments to the financial assurance plan in the facility operating record. Submit a certification to the Department that the annual update has been completed.

Review date: The annual review should occur on the anniversary of the date when the financial assurance plan was placed in the facility operating record and the certification was submitted to the Department, or at the end of the corporation's fiscal year if the mechanism is the corporate guarantee.

Schedule

The appropriate schedule for providing financial assurance will depend on each facility's operating status, size, anticipated closure date, and need for corrective action. Refer to OAR 340-94-140(3) for detailed schedule requirements associated with "worst case " closure plans, "Subtitle D" post-closure plans, Final Engineered Site Closure and Post-closure Plans and corrective action.

**Cost
calculations**

For permittees meeting the criteria in 40 CFR Part 258.75 (a) through (c), the current value of future costs should be calculated using a discount rate no greater than the Department's current reference rate. The Department will determine the reference rate annually during the month of June. It shall be in effect for the fiscal year beginning the first day of July immediately following the determination date and ending on June 30 of the following calendar year. Refer to OAR 340-94-140 (4)(a) for detailed information.

Permittees can use discounting to determine costs only if they:

- certify that the closure date is certain and there are no foreseeable circumstances that will change the estimate of site life
- comply with all applicable permit requirements
- submit a statement from a registered engineer certifying that cost estimates are complete and accurate.

Contact: Department of Environmental Quality (503) 229-5378

12.2 Financial Assurance Plan

Contents of financial assurance plan

The financial assurance plan should contain the following elements:

- cost estimates for third-party closure, post-closure, corrective action (if required) and any other requirements the Department may impose as a condition of issuing a closure permit, closing the site, implementing post-closure care activities, or implementing corrective action
 - the source of the cost estimates
 - a detailed description of the form of the financial assurance and a copy of the financial assurance mechanism
 - a method and schedule for acquiring and managing the required financial assurance funds
 - a proposal for disposing of any excess moneys received or interest earned on moneys received for financial assurance
 - adequate accounting procedures to insure that funds are collected in the correct amounts and used only for authorized purposes
 - certification to the Director of DEQ that the financial assurance mechanism meets all state and federal requirements (at the time a financial assurance mechanism is submitted to the Department and when a financial assurance plan is placed in the facility operating record)
 - annual updates of the cost estimates and financial assurance
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Cost estimate

The financial assurance plan should include written cost estimates for the Final Engineered Site Closure Plan and Final Engineered Post-closure Plan, or the "worst case" closure and Subtitle D post-closure scenarios, as applicable.

Basis for estimate

Estimate costs based on detailed engineering analyses or construction contractor bids and itemize costs for expenses such as the following:

- mobilization of equipment
- construction materials
- construction activities
- overhead
- engineering and other consulting services
- operation and maintenance of environmental monitoring and control systems
- environmental monitoring and associated laboratory analyses
- general site maintenance activities
- miscellaneous expenses, contingencies, etc.

Considerations: closure estimate Estimate closure costs based on the Final Engineered Site Closure Plan with consideration of the following factors:

- amount and type of solid waste deposited in the site
- the effectiveness of any buffer zones designed to protect adjacent land and drinking water sources
- the cost of the site's engineered closure improvements (i.e., final cover system, run-on/runoff control systems, other environmental control and monitoring systems, etc.)
- planned future use of the disposal site property
- the extent of site area closed prior to final closure of the entire site
- any other closure conditions imposed by the Department

Considerations: post-closure estimate Estimate post-closure costs based on the Final Engineered Post-closure Plan. Consider the following factors:

- a minimum post-closure care period of 30 years after the date of final facility closure
- annual costs associated with the operation and maintenance of any required environmental control and monitoring systems
- any other conditions imposed by the Department relating to post-closure care of the site

Considerations: corrective action Estimate costs based on site-specific corrective action activities outlined in a Corrective Action Report (see 40 CFR Part 258.73). Estimate in current dollars and account for the cost of hiring a third party to perform the corrective action. Account for the total costs of corrective action activities for the entire corrective action period.

Form of financial assurance Describe in detail the form of the financial assurance, using one of the allowable mechanisms. Include a copy of the mechanism in the plan.

Mechanisms for closure and post closure Use any of the following forms of financial assurance for closure and post-closure activities:

| Form of financial assurance | Requirements specified in... |
|-----------------------------|--|
| trust fund | OAR 340-94-145(5)(a) |
| surety bond | OAR 340-94-145(5)(b) or OAR 340-94-145(5)(c) |

| | |
|--|--|
| irrevocable letter of credit | OAR 340-94-145(5)(d) |
| closure or post-closure insurance policy | OAR 340-94-145(5)(e) |
| corporate guarantee from a private corporation | OAR 340-94-145(5)(f) |
| local government financial test | OAR 340-94-145(5)(g) |
| local government guarantee | OAR 340-94-145(5)(h) |
| alternative form | OAR 340-94-145(5)(i); third party certification and prior approval of the form by the Department is required |

Mechanisms for corrective action

Use any of the following forms of financial assurance for corrective action:

| Form of financial assurance | Requirements specified in... |
|--|--|
| trust fund | OAR 340-94-145(5)(a) |
| performance surety bond | OAR 340-94-145(5)(c) |
| irrevocable letter of credit | OAR 340-94-145(5)(d) |
| corporate guarantee from a private corporation | OAR 340-94-145(5)(f) |
| local government financial test | OAR 340-94-145(5)(g) |
| local government guarantee | OAR 340-94-145(5)(h) |
| alternative form | OAR 340-940145(5)(i); third party certification and prior approval of the form by the Department is required |

Method of acquiring and managing funds

Describe in detail the method and schedule for providing for or accumulating the appropriate amount of funds to ensure proper closure and post-closure care or implementation of corrective action, as applicable. The financial assurance mechanisms for closure, post-closure care and corrective action must ensure the funds will be available in a timely fashion when needed.

Excess moneys

Include a proposal for disposing of any excess moneys received or interest earned on moneys received for financial assurance. [OAR 340-94-140(4)(e)]

Collection of funds

Establish adequate accounting procedures to ensure that the disposal site operator does not:

- collect funds in excess of the amount specified in the financial assurance plan, or
 - use the funds for any purpose other than required by OAR 340-94-140(1)
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12.3 Additional Resources

Reference Federal Reserve Statistical Release H.15 (519) Selected Interest Rates.
Department of Commerce, Bureau of Economic Analysis, Survey of Current
Business.

Contact Department of Commerce Bulletin Board: (202) 482-1986.
