

SUBMISSION INSTRUCTIONS NO. 9

REQUIREMENTS FOR FINANCIAL ASSURANCE MECHANISMS

I. GENERAL. The applicable regulations for demonstrating financial assurance are the Financial Assurance Regulations of Solid Waste Disposal, Transfer and Treatment Facilities (9 VAC 20-70-10 *et seq.*). Provide the documents listed in these Submission Instructions as a part of the required permit application for facilities required to provide financial assurance for closure, post-closure, and/or corrective action. To determine the applicability of the Regulation to your facility, please review 9 VAC 20-70-50.

II. CLOSURE. [§§ 250.E., 260.E., 270.E., 320 C., 330.E., 340.E., 360.E., 370.E., 380.B., 400.E., 470.E., 520.A.2., 530 F., 540.E., and 560. of the Virginia Solid Waste Management Regulations (9 VAC 20-80-10), and 9 VAC 20-70-111.]

A. Closure Cost Estimate. [9 VAC 20-70-111] Provide a copy of the detailed breakdown of the current facility closure cost estimate, calculated to cover the cost of closure (for details see instructions for closure and post-closure plan submission).

B. Financial Assurance for Closure. Provide the signed, original financial assurance mechanism for facility closure as part of the permit application. The closure mechanism must be in an amount at least equal to the current closure cost estimate.

III. POST-CLOSURE CARE. [§§ 250.F., 260.F., 270.F., 320, 380.B., 470F and 520.C.2.g. of the Virginia Solid Waste Management Regulations (9 VAC 20-80-10), and 9 VAC 20-70-112.]

A. Post-Closure Cost Estimate. [9 VAC 20-70-112] Provide a copy of the detailed breakdown of the current post-closure cost estimate, calculated to cover the cost of post-closure care (for detail see instructions for closure and post-closure plan submission).

B. Financial Assurance for Post-Closure Care. Provide the signed, original financial assurance mechanism for facility post-closure as part of the permit application. The post-closure mechanism must be in an amount at least equal to the current post-closure cost estimate.

IV. CORRECTIVE ACTION [§ 310 of the Virginia Solid Waste Management Regulations (9

VAC 20-80-10), and 9 VAC 20-70-113.]

A. Exceedance of Groundwater Protection Standards [9 VAC 20-70-113. A.] Within 120 days of a facility finding or the Director determining Groundwater Protection Standards have been exceeded, provide a signed, original financial assurance mechanism in the amount of \$1 million.

B. Corrective Action Cost Estimate. [§ 113, 9 VAC 20-70-10] Provide a copy of the detailed breakdown of the current corrective action cost estimate, calculated to cover the cost of corrective action.

C. Financial Assurance for Corrective Action. Provide the signed, original financial assurance mechanism for facility corrective action within 120 days of the date you select your corrective action remedy. The corrective action mechanism must be in an amount at least equal to the current corrective action cost estimate.

V. Combining Costs in One Mechanism. [9 VAC 20-70-250] You may submit a combination of mechanisms to cover the cost of closure, post-closure and corrective action, as long as the total face amount of the combination of mechanisms is equal to the total combined cost estimate for closure, post-closure care and corrective action. It is not necessary to provide a different mechanism for each type of cost.

VI. Allowable Financial Mechanisms [§§ 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 250 and 290, 9 VAC 20-70-10]

A. Trust Fund. [§ 150, 9 VAC 20-70-10] Provide an originally signed triplicate of the trust fund agreement with the wording required by 9 VAC 20-70-290 A, the calculation used to determine the initial deposit, and written confirmation from the Trustee that the initial deposit into the trust has been made.

1. Trustee. [§ 150.A.] The trustee must be a bank or a financial institution that has the authority to act as a trustee and whose trust operations are regulated by the Commonwealth; and

2. Language. [§150.M.] The language of the trust agreement must be identical to the language provided in 9 VAC 20-70-290.A.

3. Payments. [§§ 150.C., D., E., F., and G.] The payments into the trust fund must be made annually and in accordance with the calculation set out in the Regulations.

B. Surety Bond. [§§ 160 and 290B, 9 VAC 20-70-10] Provide (1) a signed, original surety bond with the wording required by 9 VAC 20-70-290 B, guaranteeing that the owner or operator will perform or pay for closure, post-closure or corrective action, whichever are applicable, according to the plan; and (2) a signed, original standby trust agreement [see section 4 below].

1. Surety. [§160.A.] A surety company licensed by the Commonwealth under § 38.2-1000 *et seq.*, must issue the bond. Bonds issued by excess or surplus lines carriers are not acceptable financial assurance mechanisms.

2. Language. [§160.S.] The language of the surety bond must be identical to the language provided in 9 VAC 20-70-290.B.

3. Penal Sum. [§ 160.C.] The penal sum of the bond must be in an amount at least equal to the closure, post-closure, or corrective action cost estimate, whichever is applicable.

4. Standby Trust Agreement. [§§150, 160.H. and 290.A.] A standby trust must be established as repository for the bond funds in the event of a default. The standby trust must meet the requirements described in 9 VAC 20-70-150 except for the requirements for initial payments and subsequent payments.

C. Letter of Credit. [§§ 170 and 290.C., 9 VAC 20-70-10] Provide (1) a signed, original irrevocable standby letter of credit with the wording required 9 VAC 20-70-290.C; and (2) an originally signed standby trust agreement [see section 4 below].

1. Institution. [§ 170.A.] The issuing institution must be a bank or other financial institution regulated by the Commonwealth, a federal agency, or an agency of another state.

2. Language. The language of the surety bond must be identical to the language provided in 9 VAC 20-70-290C.

3. Amount. [§ 170.B.] The face amount of the letter of credit must be at least equal to the amount of the closure cost estimate, post-closure care estimate, or corrective action

estimate, whichever is applicable.

4. Establishment of Standby Trust Agreement [§§150, 170.G., and 290.A.] A standby trust must be established as a repository for the letter of credit funds in the event of a default. The standby trust must meet the requirements described in 9 VAC 20-70-150 except for the requirements for initial payments and subsequent payments.

D. Certificate of Deposit. [§§180 and 290.D., 9 VAC 20-70-10] Provide (1) an original certificate of deposit with a market value at least equal to the amount of the estimated cost estimate payable to the Commonwealth, (2) a signed, original assignment form, and (3) an originally signed standby trust agreement [see section 5 below].

1. Availability [§180 A] This mechanism may not be used by Sanitary Landfills.

2. Assignment [§ 180.A.] All rights, title and interest of the certificate of deposit must be assigned to the Department of Environmental Quality, Commonwealth of Virginia.

3. Language [§ 180.F.] The wording of the assignment form must be identical to the language specified in § 9 VAC 20-70-290.D.

4. Amount [§ 180.A.] The certificate of deposit must be issued for at least the amount of the closure cost estimate, Post-closure care estimate, or corrective action estimate, whichever is applicable;

5. Establishment of standby trust [§§150, 180.D., and 290.A.] A standby trust must be established as repository for the CD funds in the event of a default. The standby trust must meet the requirements described in 9 VAC 20-70-150 except for the requirements for initial payments and subsequent payments.

E. Insurance Policy. [§§ 190 and 290.E., 9 VAC 20-70-10] Provide a signed, original certificate of insurance as worded in 9 VAC 20-7-290.E and a complete copy of the insurance policy, including the declarations page and all attached endorsements.

1. Institution. [§ 190.A.] An insurance company licensed by the Commonwealth under § 38.2-1000 *et seq.*, must issue the insurance policy. Policies issued by excess or surplus lines carriers are not acceptable financial assurance mechanisms.

2. Language [§ 190.J.] The wording of the certificate of insurance must be identical to the language specified in § 9 VAC 20-70-290.E.

3. Amount. [§ 190.C.] The face amount or liability limit of the insurance policy must be equal to the current cost estimate of closure, post-closure, or corrective action for the facility.

4. Guarantee. [§ 190.B.] The policy must guarantee that funds will be available to pay for closure, post-closure or corrective action of the waste management unit.

F. Corporate Financial Test. [§§200, 290.F., and 290.H., 9 VAC 20-70-10] Submit (1) an original letter signed by the owner's or operator's chief financial officer, (2) copy of the independent certified public accountant's report on examination of the applicant's financial statement for the latest fiscal year, (3) special report from the certified public accountant, and (4) a certification of the method of funding.

1. Financial Test. [§ 200.1., 9 VAC 20-70-10] The owner/operator must meet certain financial conditions, including possessing a tangible net worth greater than the sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test plus \$10 million.

2. Documentation. [§§ 200.2 and 290.F.] Provide the following documentation with your application:

- An original letter signed by the owner's/operator's chief financial officer worded as specified in 9 VAC 20-70-290.F.;
- A copy of the independent certified public accountant's report on examination of the financial statements for the latest completed fiscal year;
- A special report from an independent certified public accountant stating that he has compared the data contained in the letter from the chief financial officer with the latest independently audited year-end financial statement and found no matters which caused him to believe that the specified data should be adjusted; and
- A certification from the chief financial officer stating the method for funding closure, post-closure, and corrective action, (whichever is applicable) and the amount currently designated for closure and post-closure in the corporation's financial statements. The certification must be in the form described in 9 VAC 20-70-290.H.

3. Qualification. [§200.2.a.(3).] The accountant's report must contain no adverse opinion, qualification or disclaimer.

G. Corporate Guarantee. [§§220, 290.F., 290.H., and 290.J., VAC 20-70-10] Provide (1) an original letter signed by the guarantor's chief financial officer, (2) a copy of the independent certified public accountant's report on examination of the guarantor's financial statements for the latest fiscal year, (3) a special report from the certified public accountant, (4) a certification of the method of funding closure, post-closure or corrective action costs, and a signed, original corporate guarantee form worded as specified in 9 VAC 20-70-290.J.

1. Financial Component. [§ 220.B.] The guarantor shall meet the requirements for owners or operators in 9 VAC 20-70-200 (Corporate Financial Test) and shall comply with the terms of the corporate guarantee.

2. Documentation. [§ 220.C.] The application must be accompanied by the required documentation:

- ❑ A letter signed by the guarantor's chief financial officer worded as specified in 9 VAC 20-70-290.F.;
- ❑ A copy of the independent certified public accountant's report on examination of the guarantor's financial statements for the latest completed fiscal year;
- ❑ A special report from an independent certified public accountant stating that he has compared the data contained in the letter from the chief financial officer with the latest independently audited year-end financial statements and found no matters which caused him to believe that the specified data should be adjusted;
- ❑ A certification from the chief financial officer stating the method for funding closure, post-closure, and corrective action, (whichever is applicable) and the amount currently designated for closure and post-closure in the corporation's financial statements as specified in 9 VAC 20-70-290.H.
- ❑ A signed, original guarantee form worded as specified in 9 VAC 20-70-290.J.

3. Qualification. [§ 220.B.] The accountant's report cannot contain an adverse opinion, qualification or disclaimer.

H. Local Government Financial Test. [§§210, 290.G., 290.H. and 290.I., 9 VAC 20-70-10] Provide an original letter signed by the local government's chief financial officer, (2) a copy of the locality's comprehensive annual financial report, (3) a special report from the certified

public accountant, (4) a certification of the method of funding closure, post-closure and corrective action costs, and, if applicable, (5) a certification indicating the current reserve obligated to closure and post-closure care costs.

1. Test. [§ 210.1.] The owner/operator must meet the conditions specified and the total environmental obligations insured through financial tests may not exceed 43% of the local government's total annual revenue. If a local government's environmental obligations exceed 20% of the local government's total annual revenue, the locality must establish a restricted sinking fund, escrow account or letter of credit in the amount of the closure cost estimate.

2. Documentation. [§ 210.3.] The application must be accompanied by the required documentation:

- ❑ An original letter signed by the locality's chief financial officer including all of the current cost estimates covered by financial tests, evidence and certification that the local government meets the conditions of 1.a., 1.b., and 1.c. of 9 VAC 20-70-210 with the wording found in 9 VAC 20-70-290.G.;
- ❑ A copy of the independent certified public accountant's report on examination of the locality's comprehensive annual financial statement for the latest completed fiscal year;
- ❑ A special report from an independent certified public accountant stating that he has compared the data contained in the letter from the chief financial officer with the latest independently audited, comprehensive annual financial report and found no matters which caused him to believe that the specified data should be adjusted.
- ❑ A copy of the comprehensive annual financial report.
- ❑ A certification of the method of funding of closure, post-closure and corrective action costs.
- ❑ If required, a certification of escrow/sinking fund/irrevocable letter of credit balance as worded in 9 VAC 20-70-290.I.

3. Qualification. [§ 210.2.a(3)] The accountant's report cannot contain an adverse opinion, qualification or disclaimer.

I. Local Government Guarantee. [§§230, 290.H. and 290.K., 9 VAC 20-70-10] The guarantor shall meet the requirements of the local government financial test in 9 VAC 20-70-210. Submit (1) an original letter signed by the guarantor's chief financial officer, (2) a copy of the guaranteeing locality's comprehensive annual financial report, (3) a special report from the certified public accountant, (4) a certification of the method of funding closure, post-

closure and corrective action costs, if applicable, (5) a certification indicating the current reserve obligated to closure and post-closure care costs, and (6) an original, signed local government guarantee form.

1. Financial Component. [§ 230.A.] The guarantor shall meet the requirements for owners or operators in 9 VAC 20-70-210 (Local Government Financial Test) and shall comply with the terms of the corporate guarantee.

2. Documentation. [§ 230.C.] The application must be accompanied by the required documentation:

- ❑ A letter signed by the guarantor's chief financial officer worded as specified in § 290.G.;
- ❑ A copy of the independent certified public accountant's report on examination of the guaranteeing entity's comprehensive annual financial report for the latest completed fiscal year;
- ❑ A special report from an independent certified public accountant stating that he has compared the data contained in the letter from the chief financial officer with the latest independently audited year-end financial statement and found no matters which caused him to believe that the specified data should be adjusted;
- ❑ A copy of the comprehensive annual financial report.
- ❑ A certification of the method of funding of closure, post-closure and corrective action costs.
- ❑ If required, a certification of escrow/sinking fund/irrevocable letter of credit balance as worded in 9 VAC 20-70-290.I.
- ❑ An original, signed local government guarantee form worded identically to the language specified in 9 VAC 20-70-290.K.

VII. Annual Update Obligation. Upon initial submittal, you must update the face amount of your financial mechanism annually to account for the effects of inflation.

A. Timing. An updated financial assurance mechanism must be submitted each year by the anniversary date of the original mechanism (the date of issuance).

B. Method. An owner or operator must multiply the total cost estimate by an annual inflation factor derived from the Gross National Product (GNP) implicit price deflators (IPD). The annual inflation factor is calculated by dividing the previous year's inflation

factor by the annual inflation factor two years prior to the current year.

C. Reference. The annual IPDs and inflation factors can be obtained from the following sources:

Name	Phone #	Internet Address	Note
RCRA/ Superfund Hotline	800/424-9346	N/A	IPDs and inflation factor available.
Bureau of Economic Analysis	N/A	www.bea.doc.gov/bea/dn/nipaweb/NIPATableIndex.htm	Scroll down to Gross National Product- command basis, and select 7.3 (IPDs only available).
Survey of Current Business	202/512-1800	http://bookstore.gpo.gov/index.html	Published by the Department of Commerce (IPDs only available)
Financial Assurance Office	804/698-4123 Leslie D. Beckwith	Ldbeckwith@deq.state.va.us	IPDs and inflation factor available.