

FINANCIAL ASSURANCE: PLANNING FOR COMPLIANCE

Detailed costs estimates required by the Louisiana
Solid Waste Regulations

Overview of Financial Assurance

- Financial Assurance ensures that the public will **not** pay for closure or post-closure care.
- Financial Assurance is used when the state must perform closure and/or post-closure care for whatever reason.

Programs Requiring Financial Assurance

- Hazardous Waste (RCRA) permitted facilities.
- Solid Waste Permitted Facilities
 - Processors
 - **Land Disposal Facilities (Landfill)**
- RCRA permitted facilities required to perform corrective action under LAC 33:V.3322.
- Other Hazardous Waste facilities performing corrective action under LAC 33:V.3322

Basis for the FA Requirement

- Financial assurance is a permit requirement.
 - Approved cost estimate for closure and post-closure care (kept onsite).
 - Obtain and maintain financial assurance to cover the closure and post-closure cost.

Two Categories of Financial Assurance

- Self assurance. Owner uses financial metrics described in the regulation to determine pass/fail.
- Third party instruments. Owner purchases financial assurance from a financial institution.

Permit Planning

- Pre-application Process
- Application Process
- **Order to Commence (Start-up of operations)**
- Facility operations
- Facility closure (and post-closure)

Pre-Application Phase

- Closure and Post-closure costs. Financial assurance starts with the cost estimates.
- Facility planning and design (landfill design example). Closure costs (and post-closure if applicable) developed at the design stage.

Application Process

- LDEQ Hazardous and Solid Waste Permits require a detailed cost estimate based on the cost of a third party to do the work
- Financial Assurance (method of providing assurance) should NOT be specifically included in the application. Financial assurance documents require specific document control procedures.

Order to Commence

- Receipt of Waste. The receipt of waste triggers the financial assurance obligation.
- Financial assurance obligations **must be met** prior to starting waste management operations.
- Selection of a financial assurance provider. 60 days prior to accepting waste is not the time to start looking for an financial assurance provider.

Selection of Financial Assurance

- Self Assurance. Self Assurance is meeting the requirements of the corporate or local government financial tests.
- Third Party Providers. Financial institutions “sell” financial assurance instruments. The process to obtain a letter of credit or bond is essentially an application to the bank or bond company.

Self Assurance

- Preparation of a Financial Test Submittal.
 - Coordination with corporate financial personnel
 - Compiling financial statements
 - Contracting a CPA to perform required accounting procedures
 - Performing the required analysis to determine if you pass
- Preparation of a Financial Test requires considerable lead time.
- Failure to meet requirements of Financial Test.

Third Party Instruments

- Financial assurance must be purchased in the event the permittee is unable to self assure.
- Application process. Financial Assurance providers require an application process. (i.e., like applying for a loan.)
- Costs vary based on instrument time and economic conditions.

Third Party Providers

- Financial Assurance instruments must follow the wording requirements of the regulations.
- Providers are not required to provide financial assurance to the permittee and must agree to issue the instrument per the regulations.

Points to Remember

- State is the beneficiary of the financial assurance.
- Notice (120 day) must be provided to LDEQ of cancellation by the **provider**.
- The provider shall request the LDEQ's consent prior to acting on a cancellation request from the **owner/operator**.
- The owner/operator is the party subject to the financial assurance regulations. The provider is subject to the terms of the financial assurance instrument.

Cost Estimate Standards

- Maximum cost or when the extent and manner of operation is most expensive.
- Cost of a third party to perform closure/post-closure.
- Disposal cost for waste shall be included even if the waste might have economic value.
- Cost estimates are based on the closure plan for what is permitted.

Cost Estimate Maintenance

- Annual Adjustment for Inflation
- Cost estimates must reflect changes to the closure and post-closure care plans
- Most recent cost estimate must be maintained at your facility.
- Financial Assurance instruments must be adjusted when the cost estimate changes.
- LDEQ may request an updated itemized cost estimate.

LDEQ Cost Estimate Reviews

- The State of Louisiana is responsible for the closure and post-closure care in the event there is no responsible party.
- Inadequate Cost Estimates represent LDEQ's greatest exposure in terms of environmental liability.

Landfill Area Cost Estimate Review

- Regulatory Requirements
 - LAC 33:VII.1303.A.3.a –
 - 3rd party
 - Most expensive
- Methods for Determining Area without final cover
 - Survey data
 - Cells opened
 - Inspections

Permit Requirements

- Permit Operational Plans
 - Facility Proposes Maximum Area Open
 - Area required shall be rolling
 - Once maximum area reached, areas must be closed before any new areas can be constructed.
 - Permit modification must be submitted if area without final cover must be increased.

Reporting

- Annual Certification Of Compliance
 - (BOX E) Maximum area that will require final cover
 - (BOX F) Provide the waste disposal area that is currently without final cover
- Annual Cost Estimate Update
 - Based on Permit
- Cell Construction Certification Type I/II
 - Survey Data

Flexible Acreage

- What is Flex Acreage?
 - A mechanism to adjust closure cost estimate based on current conditions.
- Purpose
 - Allow owners and operators of solid waste landfills flexibility in the annual closure estimation process.
 - Requires financial assurance only for areas that are certified open (Certified by the Department).

Guidance

- Flexible Acreage Cost Estimation Guidance
 - Waste Permits Division
- Applicable Facilities
 - Disposal facilities constructed with distinct cells
 - Type I/II Landfills
 - Type III Landfills

Applicable Regulations

- LAC 33: VII.1303.A.3.a - The applicant or permit holder must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these regulations. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

Applicable Regulations

- LAC 33: VII.519.B.6.a.3 -an itemized cost of closure of the facility, based on the estimated cost of hiring a third party to close the facility at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive.

Initial Requirements

- Closure Plan Minor Modification
 - Statement Flexible Acreage shall be utilized for closure cost estimation
 - Entire Landfill Footprint shall be maximum area without final cover.
 - Plan to include items required for annual cost update
 - Updated closure cost estimate
 - Cost estimate shall be specify a unit-cost basis
 - Total closure cost = unit cost x area without final cover

Initial Requirements

- Historical Documentation
 - Copy of the previous closure cost estimate
 - Copies of letters from department approving certification of any constructed disposal areas.
 - Copies of letters from the department approving certification of any closed areas.

Items required Annual Cost Estimate

- Annual cost estimate shall include a copy of previous cost estimate
- List of letters form the department approving certification of (See table):
 - Any constructed disposal areas
 - Any closed disposal areas
 - Future projected cell (next year)

Items Required Annual Cost Estimate

- Updated closure cost estimate
 - Updated unit cost based on appropriate inflation factors
 - Calculation of the total cost of closure. *Total closure cost = unit costs X area without final cover*
 - Calculation of the area without final cover.
Area without final cover = total area constructed – area certified closed + projected new cell construction in the next 12 months

Supplemental Information

- Only closed areas that have been certified closed (as approved by the department) may be subtracted from the closure cost estimate
- Both open and close areas must be included in the calculations
- All pre-subtitle D areas must be included in the calculations
- This guidance document does not address post-closure

Example

Area Constructed	Date Certified Open	Area (acres)
Cell 1	4/5/1995	10
Cell 2	9/9/1996	6
Cell 3	7/5/1997	4
Cell 4	2/3/2011	5
Cell 5	4/8/2012	10
Cell 6	5/5/2013	12
Area Closed	Date letter Certified Closed	Area (Acres)
Cell 1	4/5/2000	10
Cell 2	9/9/2010	6
Cell 3	7/5/2011	4
Area Projected	Date Projected Open	Area (Acres)
Cell 7	May-14	5

Example

	Area (Acres)
Total Area Constructed	+47
Area Certified Closed	-20
Projected New Cell Construction	+5
Area Without Final Cover	=32

Out of Compliance

- Cost Estimate Inadequate
 - Update the cost estimate and increase the value of the financial instrument and/or,
 - lower the amount of environmental obligations (e.g., number of tanks, acreage open, etc.)

Regulations

- Solid Waste Regulations
 - LAC 33:VII.1303.A. cost estimate requirements
 - LAC 33:VII.1303.B. requirements for financial assurance instruments

Regulations

- Hazardous Waste Regulations (Chapter 37)
 - LAC 33:V.3705. Cost estimates for closure.
 - LAC 33:V.3707. Financial assurance for closure.
 - LAC 33:V.3709. Cost estimates for post-closure.
 - LAC 33:V.3711. Financial assurance for post-closure.
 - LAC 33:V.3322. A and B. Financial assurance for corrective action.

In Conclusion

- Advance planning for financial assurance will prevent delays in start-up for new facilities.
- Continued attention to cost estimates and financial instruments keep a facility in compliance with the financial assurance requirements.
- LDEQ is working to keep facilities in compliance with the financial assurance regulations.

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