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## Financial Assurance for Scrap Tire Facilities and Transporters

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Rules 3745-27-15 through 3745-27-17 of the Ohio Administrative Code ("OAC") pertain exclusively to financial assurance requirements and include requirements for scrap tire facilities and scrap tire transporters. Arrangements for providing financial assurance are made when applying for a license as a facility or when applying for a registration as a scrap tire transporter. Each scrap tire facility is required to provide financial assurance to guarantee funding will be available to perform proper closure (removal/disposal of scrap tires and general site cleanup), fire suppression, or other measures to abate hazards to public health and safety or to the environment **at that facility**. Each scrap tire transporter is required to provide financial assurance to assure funding will be available for removing and disposing tires which have been improperly accumulated or discarded **by that particular transporter which has provided financial assurance**.

The process of providing financial assurance does not necessarily involve depositing cash into a fund unless a trust fund is set up specifically for that purpose. The process of providing financial assurance can be done by a scrap tire company itself, but most companies will need to hire a financial institution such as a bank, a bonding, or insurance

company. If hiring a financial institution, the scrap tire company may be charged an annual fee by the financial institution which is providing the financial assurance. If a scrap tire company has the financial resources to pass a financial test, then coordination with a financial institution is not necessary. Financial assurance is required for as long as the scrap tire company remains in business.

### Required Amounts of Financial Assurance

The amount of financial assurance required depends on the type of scrap tire company needing financial assurance. If a scrap tire company is required to be approved as more than one type of scrap tire category, (e.g. licensed/registered as a storage facility and also registered as a transporter), then separate applications are required to be submitted for each category and financial assurance is to be submitted with each of those applications.

The actual time schedule when full funding is required for each category of scrap tire business differs with scrap tire transporters and all other categories. Scrap tire transporters are required to have their financial assurance fully funded at the time of registration. Scrap tire storage, recovery, monofill, and monocell facilities may make annual cash payments into a trust fund over a period of time (if a trust is chosen as the primary mechanism). Storage and recovery facilities have five years to fully fund a trust. These annual payments are 20% of the total amount of financial assurance required for that particular facility. Monofills and monocells continue payments over the

anticipated life of the facility or for twenty years, whichever is less. If any other mechanism besides a trust fund is chosen as the primary mechanism, then financial assurance is considered to be fully funded at the time the primary mechanism is executed.

Scrap tire **storage** facilities must provide financial assurance based on the maximum number of tires expected at any time during the license year at the facility. If the maximum number of tires changes, then the financial assurance is to be adjusted accordingly. This is also true for recovery facilities.

**Recovery** facilities also provide financial assurance according to the maximum number of tires expected to be located at the facility. For both storage and recovery facilities, the amount required depends on the number of tires stored in compliance and the number of scrap tires stored out of compliance with the pile size limitations and restrictions. The amount of financial assurance required for scrap tires located in compliance is \$1.00 per passenger tire equivalent ("PTE") A PTE is equal to twenty pounds. Truck tires are roughly equal to 100 lbs. and require \$5.00 per tire of financial assurance. For all shredded tires, the rate is \$1.00 for every twenty pounds of shreds. For tires which are not stored in compliance, the amount of financial assurance required is twice the normal rate for any given tire size. This means that for every PTE which is not stored in compliance with pile size limitations, the rate of financial assurance required is \$2.00 per tire and for truck tires not stored in compliance, the rate is

\$10.00 per tire.

The amount of financial assurance required for a scrap tire **transporter** company is \$20,000 regardless of how many tires are transported or how many trucks the company owns or leases.

For a **mobile recovery** facility, (e.g. a portable shredder), the amount of financial assurance required is \$50,000 for each portable unit.

For **monofill and monocell** facilities, the amount of financial assurance required is determined in the same way that other landfills determine their financial assurance amounts and is based on the estimated cost of closure and post-closure activities.

### Financial Assurance Mechanisms

The list of mechanisms which are allowed by Ohio EPA in order to provide the financial assurance required are available to all solid waste companies including scrap tire companies. General guidelines for all financial assurance mechanisms can be found in Rule 3745-27-15 of the OAC. Rule 3745-27-16 of the OAC describes funding requirements for post-closure care activities for monofills and monocells.

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The term "mechanism" is used to describe the different contractual arrangements acceptable to the Ohio EPA. **The wording required for all financial assurance forms or "instruments" is found in each relevant section in OAC 3745-27-17.** The financial assurance mechanisms allowed by the Ohio EPA include: trust funds, financial guarantee bonds, performance bonds, letters of credit; insurance and the financial tests. Requirements for each specific mechanism can be found in the respective section within rule 3745-27-15 of the OAC. For example, trust funds are explained in section (F); financial guarantee bonds are in section (G); performance bonds are in (H); letters of credit are in (I); insurance is explained in (J); the financial test requirements are explained in section (K); the use of multiple mechanisms is explained in (L); and the use of a mechanism for more than one facility is explained in section (M). The conditions when financial assurance can be fully released for scrap tire facilities are described in (N) and the release of financial assurance for scrap tire transporters is explained in (O). **Each scrap tire company must choose the mechanism and meet all of the requirements of that mechanism.** That choice may depend on: 1) meeting the requirements of the specific mechanism in the OAC and; 2) the cost charged by the financial institution to administer and manage the mechanism.

**Trust funds** involve an agreement in which a scrap tire company makes annual cash payments into the trust fund. The cash deposited into the trust is only used by the Ohio EPA if necessary. The benefit in using a trust is that all funds paid into the trust, (less any needed for cleanup) can be withdrawn after the close of business operations. Annual interest earned by the trust can be withdrawn each year after the full required amount of financial assurance is provided. There is a \$2 million maximum on financial assurance for all scrap tire storage and recovery facilities which have been in business before March 1, 1996. This means, if there are more than, for example, 3 million PTE tires located at a facility which are in compliance, the financial assurance required for that particular facility is \$2 million.

A standby trust fund is different from a trust fund. **A standby trust fund is required to be set up along with all bonds and letters of credit.** If a letter of credit is the mechanism chosen by the scrap tire company, then the same bank could also set up the standby trust fund. A standby trust fund remains an empty account and is only funded in the event that Ohio EPA must draw on the bond or letter of credit. The standby trust fund may, in fact, never actually receive cash deposits from the primary mechanism (i.e. performance bonds and letters of credit) unless funding is required by the Ohio EPA or unless the financial guarantee bond is used. If the financial guarantee bond is used, then funding from the bond is placed into the standby trust at the time of closure of the facility (or at the close of business operations for scrap tire transporters). In the case of scrap tire transporters, funds will be released when the Ohio EPA has verified that the transporter has operated in accordance with OAC. Although the standby trust fund and the trust fund are significantly different arrangements and are used differently,

they are both set up by banks.

**Performance bonds** guarantee that the scrap tire facility will perform proper closure (removal/disposal of scrap tires and site cleanup), fire suppression, or other measures to abate hazards to public health and safety or to the environment at that facility. For transporters, the bond guarantees that the scrap tire company will deliver scrap tires only to licensed disposal or recovery facilities or to sites approved by Ohio EPA. If these activities are not performed in accordance with OAC, Ohio EPA will allow the bonding company to perform the work required. If neither the bonding company nor the owner/operator will perform final cleanup, then Ohio EPA will direct the bonding company to deposit the funds from the bond into the trust. **Only** under these conditions would an actual cash deposit be required into the standby trust fund.

**Financial guarantee bonds** guarantee the same operational criteria as performance bonds. The only difference between the two types of bond is that if a financial guarantee bond is set up, and eventually required to be drawn on, then the bonding company will not be offered the option of performing any required cleanup and will instead be directed to deposit funds from the bond into the trust. The funds deposited into the trust will be used by Ohio EPA to pay a contractor for closure of a facility and/or removal of scrap tires.

**Letters of credit** are issued by banks and guarantee the same activities as performance bonds listed above. An actual cash deposit into the standby trust fund would **only** be required if the same conditions existed as those for a performance bond.

Certificates of **Insurance** can be used to provide financial assurance coverage if the owner or operator's policy coverage is consistent with the contractual criteria set by Ohio EPA (e.g. guarantees closure of a scrap tire facility or would guarantee cleanup of open dumped tires after an intentional act of open dumping for scrap tire transporters identical to the other mechanisms).

**No matter which mechanism is chosen and used by the scrap tire company, Ohio EPA will use the same criteria to determine if the financial assurance is to be drawn upon and used. The conditions when Ohio EPA will release funds back to the scrap tire company are the same for all mechanisms.**

### Annual Adjustment

Each year, all companies required to provide financial assurance are also required to adjust their financial assurance for inflation. This adjustment is derived from the annual "implicit price deflator for gross domestic product" as published by the U.S. Department of Commerce in its "Survey of Current Business." The inflation factor is the result of dividing the latest published annual "deflator" by the "deflator" for the previous year. The inflation factor for any given year is also available from the Ohio EPA.