



Financial Assurance FAQs for Ohio C&DD Facilities

This document provides an overview of the financial assurance requirements and tools available for calculating third-party cost estimates for final closure and post-closure care at Construction & Demolition Debris (C&DD) Facilities.

Applicable Rules

Construction & Demolition Debris Financial Assurance Rules

3745-400-12	Final closure
3745-400-13	Financial Assurance for final closure
3745-400-14	Wording of the Instruments
3745-400-16	Post-closure care
3745-400-18	Financial Assurance for post-closure care

Applicability & Background

This document is applicable to C&DD facilities. Adequate financial assurance is an important component in the environmentally sound operation and management of C&DD landfills and helps to ensure resources are available to properly close a facility without the use of public funds. As such, an accurate estimate for costs of these activities is key, which is why Ohio EPA encourages both owner/operators and licensing authorities to carefully evaluate cost estimation information.

Frequently Asked Questions

- Q1. *What are the financial assurance requirements for an owner/operator of a C&DD landfill?***
- A1. Each owner/operator must establish and submit to the licensing authority a cost estimate for final closure and post-closure care based on the cost a third party would need to conduct final closure and perform post-closure care. Once approved by the licensing authority, these costs must be funded and maintained using the financial assurance mechanisms available under the C&DD financial assurance rules. The owner/operator must review these estimates annually and update the financial assurance instruments whenever an increase is appropriate.
- Q2. *How do I prepare a third-party cost estimate?***
- A2. Ohio EPA has created a Financial Assurance Cost Estimating (FACE) tool in the form of a MS Excel spreadsheet which is designed to assist with preparation of cost estimates. The tool can be downloaded from [Ohio EPA's C&DD program page](#), under the "Resources" tab. The spreadsheet includes Ohio EPA's estimation of likely costs for the various components of final closure and post-closure activities. The intent behind the numbers is to provide owner/operators and cost estimate reviewers with a practical frame of reference for preparation of site-specific cost estimates. In all cases, documented facility-specific costs should be used for preparation of cost estimates. The provided reference values are meant to assist in the preparation of the cost estimate and are not to be viewed as "required" or baseline values. Use of the FACE tool is not required; however, it is designed to simplify the process and ease the preparation of third party estimates. The owner/operator is not prohibited from using other cost estimating services like RS Means (or other propriety cost estimating tools) or qualified engineering consultant estimates.
- Q3. *If I don't want to use reference unit price listed in the FACE tool, how can I use a different estimate in the tool?***
- A3. The noted costs in the FACE tool are included for reference purposes and for use as an "easy button" approach for cost estimate preparation. It is entirely appropriate for applicants to use site-specific third party costs in lieu of the FACE reference unit prices. To support the appropriateness of specific costs, owner/operators are encouraged to include an explanation in the space provided in the FACE document. A detailed quote from a third party

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vendor is an example of acceptable documentation to support a specific unit price. As noted in A2 above, use of propriety cost estimate sources such as in the most recently published RS Means Book is another acceptable method of supporting a specific unit price. These detailed explanations will help to assist the licensing authority in making an adequate assessment of the cost.

Q4. *What detail is needed in a third-party cost quote to make it supportable for a cost estimate?*

A4. A third-party quote should be specific in the description of the job to be completed and the costs associated with those activities. The quote should list the date or length of time the quantities and prices will be honored to the parties completing the job. In addition, the quote should be able to be verified by the licensing authority. The quote should clearly outline all cost details (no hidden costs or fees). The third-party quote should be a quote that is available to the licensing authority or any other party looking to secure similar services. Again, the purpose is to ensure that adequate funding is available to the licensing authority to close the facility and perform post-closure if necessary.

Q5. *How will I know if the cost estimate I submitted is acceptable to the licensing authority?*

A5. The cost estimate should be included as a part of the annual license application which is required to be submitted by September 30th of each year. If there are any deficiencies in the cost estimate, the licensing authority will notify you no later than 30 days after receipt of the license application. Owner/operators are also encouraged to discuss cost details with the licensing authority in advance of application submission. Upfront communication and dialogue between the applicant and the licensing authority will help the parties to identify and address concerns/expectations prior to formal cost estimation review.

Q6. *Once the cost estimates are accepted by the licensing authority, how do I fund these costs?*

A6. There are five financial assurance mechanisms available to fund these costs. They are:

1. Trust Fund
2. Surety Bonds*
 - a. Surety bond guaranteeing payment into a standby trust fund
 - b. Surety bond guaranteeing performance of final closure/post-closure care

3. Letter of Credit*

4. Insurance

* A standby trust agreement must be established with these mechanisms

For more information about the specific requirements of these mechanisms, please reference OAC Rules 3745-400-13 for final closure and 3745-400-18 for post-closure care. The required wording of these mechanisms is found in OAC Rule 3745-400-14. Final closure and post-closure care may be combined into one mechanism.

Q7. *I am applying for a license for a C&DD facility and I have pre-purchased and own soil in borrow areas or stockpiles for use in final closure/post-closure activities. Can I eliminate those soil purchase costs when calculating the final closure and post-closure care cost estimates?*

A7. Yes. Ohio EPA can allow C&DD license applicants to eliminate spot-market soil costs in such situations. Qualifying soils must be made legally available to the licensing authority to access and use for conducting final closure/post-closure care activities should the C&DD facility license applicant fail to conduct those activities. To support this approach, the following items are necessary:

- Documentation regarding the volume of soil and evidence the soil meets the soil characteristic requirements of OAC rules 3745-400-12(E)(8), 3745-400-07(G)(2)(a)(i), and 3745-400-08(C).
- Evidence of who owns the soil and who owns the property holding the soil.
- Survey and legal description of the property holding the soil.
- The license applicant and owner of the land holding the soil must accept legal restrictions ensuring the soil is kept and maintained for the intended purpose and legally protected against other claims (mortgages, liens, bankruptcy).

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An environmental covenant is one type of consensual legal mechanism that can ensure availability of soil for the licensing authority's use. Ohio EPA has created a separate [environmental covenant instruction](#) document that is available on our web site. A covenant template is available as a fillable form at from [Ohio EPA's C&DD program page](#), under the "Resources" tab.

Q8. *I am applying for a C&DD license in the upcoming year but will not likely obtain an environmental covenant until later in the year. The environmental covenant is to support the licensing authority's use of soil I own in borrow areas or soil stockpiles, which affects the final closure and post-closure care cost estimates in the license application. Can the license be issued?*

A8. Under the above circumstances, the license can be issued based on final closure and post-closure care cost estimates for a spot-market soil purchase. Use of the spot-market soil purchase cost estimate is appropriate since the license applicant and owner of the property holding the soil have not yet legally established the licensing authority's ability to access, remove and use soil for final closure/post-closure activities should the licensee fail to conduct those activities.

At the time of the submittal of an acceptable environmental covenant for the director's signature, the licensee should also submit a request for an exemption to the Ohio EPA Division of Materials and Waste Management (DMWM). DMWM will recommend that the Ohio EPA director issue an exemption with the director signed environmental covenant. The requested exemption should seek adjustment of the license's final closure and post-closure care cost estimates without the applicant needing to submit an application for a license modification. If no exemption request is submitted, the owner/operator will have to submit an application for a license modification to adjust the license's final closure and post-closure care cost estimates.

Q9. *I have an approved total cost estimate from the previous year's annual construction and demolition debris license. This year there is a change in unit quantity in one area of the total cost estimate based on work completed, but the unit price remains the same as the prior year and nothing else changes in other areas of the total cost estimate. May I submit the new recalculated itemized cost estimate including inflation with only the one area of the cost estimate different (unit quantity) from the previous year's submittal?*

A9. Yes. Conditions at a facility may change from year-to-year or during the year causing a change in unit quantities. The same is true for a unit price. The unit price may change due to changes in the market. With each annual license, the licensing authority reviews the final closure and post-closure care cost estimates. It seems reasonable, however, that if the unit quantity changes with no change in unit price in a particular section from the previous year's acceptable total cost estimate and inflation is applied to that total cost estimate, it shouldn't be necessary for the licensing authority to scrutinize the unit price. An explanation by the owner/operator to the licensing authority describing what the change is and why all unit prices remain the same may be helpful. The explanation provided may expedite the review and not require such scrutiny to the unit price if the previously approved unit price is still available to the owner or operator and to the licensing authority. Other areas of the total cost estimate where quantities change, but unit prices do not would follow the same rationale.

Q10. *When I receive an environmental covenant, how will it be applied to my financial assurance estimate?*

A10. Once the environmental covenant is recorded at the county office, the owner/operator may submit the FACE tool to the licensing authority with the reduced costs for soils based on the recorded environmental covenant. See A8 above for the procedural aspects of how license's final closure and post-closure care cost estimates can be revised.

Contact

For more information, contact the Financial Assurance Section in the Division of Materials & Waste Management at (614) 644-2621 or <http://epa.ohio.gov/dmwm/Home/NonHWFinancialAssurance.aspx#131764264-contacts>.